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STATE OF WASHINGTON

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**NO. 54939-5-II**

WASHINGTON STATE COURT OF APPEALS  
DIVISION II

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MICHAEL J. COLLINS PRO SE

Appellant,

v

WASHINGTON STATE DEPARTMENT  
OF LABOR & INDUSTRIES

Respondent.

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**BRIEF OF APPELLANT MICHAEL J. COLLINS PRO SE**

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## TABLE OF CONTENTS No. 54939-5-II

	Page
I. INTRODUCTION.....	1
II. ASSIGNMENTS OF ERROR.....	2
Assignments of Error	
No. 1.....	2
No. 2.....	2
No. 3.....	2
No. 4.....	2
No. 5.....	2
No. 6.....	3
No. 7.....	3
No. 8.....	3
No. 9.....	3
No.10.....	3
Issues Pertaining To Assignments Of Error	
No. 1.....	4
No. 2.....	4
No. 3.....	4
No. 4.....	5
No. 5.....	6
No. 6.....	6
No. 7.....	7
No. 8.....	7
No. 9.....	8
No.10.....	8
III. STATEMENT OF HISTORY OF THE CASE.....	9

**CONTINUED TABLE OF CONTENTS No. 54939-5-II**

	Page
IV. ARGUMENT.....	12
A. Pertaining to Department Lack of Jurisdiction.....	12
B. Department Illegal Segregation Directly Relates to Department November 14, 2017 Order.....	16
C. Department Claim Manager Exemption from Testifying by the Board, and Affirmed by Superior Court, as both Board, and Court, Affirms Prejudicial Error.....	26
D. Olympic Interiors Inc., Dispute of My Neck Injury Claim is Based on its Payroll Document Falsification, and its Intentional <b>Spoliation</b> .....	38
E. My 'Protected Property Interest' denied, is directly, as legally related to, Department illegal 'Segregation', and Department 'Jurisdictional Defect'.....	50
F. ARGUMENT SUMMATION.....	54
V. CONCLUSION AND RELIEF SOUGHT.....	67

TABLE OF AUTHORITIES      No. 54939-5-II

Cases

	Page
Cena v State 111 P.3d 1190 (2005).....	59
Dennis v Department Of Labor & Industries 109 Wn. 2d 467, 745, P.2d 1295 (1987).....	17
Goldberg v Kelly 397 U. S. 254 90 S. Ct. 1011 (1970).....	53
Homeworks Constr., Inc., v Wells 133 Wn. App. 892 138 P.3d 654 (2006).....	41
In re Pers. Restraint Deyer 143 Wn. 2d 384, 398 20 P.3d 907 (2001).....	61,62
Mathews v Eldridge 424 U. S. 319 96 S. Ct. 893 (1976).....	53
McDonald v Department Of Labor & Industries 104 Wn. App. 617 (2001) Division II Court Of Appeals.....	5,34,35,37,60,67
McGuire V Department Of Labor & Industries 179 Wash. 645, 38 P.2d 266 (1934).....	16,61
Miller v Department Of Labor & Industries 200 Wash. 674 94 P.2d 764 (1939).....	17
State v Fitzpatrick 5 Wn. App. 661, 491 P.2d 262 Division II Court Of Appeals (1971).....	34



**UNPUBLISHED OPINIONS    No. 54939-5-II**

In re: Gail Conelly, BIIA Dec., 97 3849 (1998).....	29,34
In re: Dennis Johnson, BIIA Dec., 17 18840 (2018).....	32,33,34
In re: Diane K. Deridder Docket No. 98 22312.....	34,35,36,37
In re: Pablo Garcia Dckt. No. 05 15239 (March 28, 2006)...	34,35,36,37
In re: Robynhawk Freebyrd-Brown, BIIA Dec., 02 10758 (2003)...	26,34
In re: Danny B. Thomas Docket 40, 655.....	51,53

Specific Briefing Symbol Index

RP --references Report Of Proceedings from Superior Court

CP --references Clerks' Papers from Superior Court

Ex. No.--references Appendix Exhibits from my January 09, 2020 Appellants Opening Brief CP 5-66 Appendix as ,,,numbered,,, and herein referenced separate from,,, this Division II Brief as App. Ex. A thru J as RAP 10.4(c).

CABR --references Certified Appeal Board Record, forwarded to Superior Court, and forwarded to this Division II Court Of Appeals.

CABR documents must be reviewed for specific relevance, to include,,, April 6, 2018, and April 12, 2018 both Dockets Motions to include Abuse of Discretion Standard of Review, February 12, April 1, May 16, 2019 both Dockets Specific Raised Objections and Errors. And Department Claim manager Mark Fowble on my timely filed Witness Lists, and June 8, 2018, and April 15, 2019 both Dockets ER 201 [all] request to Take Judicial Notice, and to include this Court review of all documents, both accepted, and rejected, to support my Question Of Law and Fact legal argument,,, herein.

**STATUTES**    No. 54939-5-II

Page

RCW 7.16.160.....	59
RCW 51.04.010.....	55,56,58
RCW 51.04.030(1).....	56,58,64,70
RCW 51.16.070.....	3,7,39,40,54,56,68
RCW 51.24.020.....	55
RCW 51.32.080(5).....	16
RCW 51.32.100.....	16
RCW 51.48.040.....	3,7,39,40,54,56,68
RCW 51.52.050(2)(a).....	12
RCW 51.52.115.....	1,3,10,54
RCW 51.52.160.....	34,35

**RULES**

RAP 10.4(c).....	45
RAP 11.4(i).....	45, App. Pg.1. <b>Ex. F</b>
GR 14.1(c) Court Of Appeals 'reasoned decision' request...	67,68,69,70
CR 12(b)(6)(c).....	42
CR 12(b)(all).....	55
CR 42(a).....	63,64,69
CR 56(c).....	42
ER 201 (all).....	61

**RULES** continued No. 54939-5-II

	Page
CR 59.....	1,6,46,47,49
CR 60.....	1,6,47,49
ER 801(d)(2).....	37
ER 804(b)(1).....	45
ER 806.....	47

**STATE CONSTITUTIONAL PROVISIONS**

Article I Section 3 my 'protected property interest'.....	50,51
---	-------

**ADDITIONAL AUTHORITY**

BLACK'S LAW DICTIONARY (2nd ed. 1910) IRREGULARITY.....	14
BLACK'S LAW DICTIONARY 268 (8th ed. 2004) 'duty to preserve' bad faith.....	6
UCLA Law Review Vol. 42 (1995), Procedural Consolidation Original, and Appellate.....	64

I. INTRODUCTION

As this section is RAP 10.3(a)(3) optional, as specific, this Appeal I, Michael J. Collins Pro se as filed, is an extraordinary case that as originating at the original and sole tribunal, as the Washington State Department Labor & Industries, then as *fact de jure*, any, and all fraud, Intentional **Spoliation**, or such conduct, by any party to this case at its origin, and as *fact de jure* then must be held to accountability by Superior Court Rules, both at the Department legal adjudication level, and at the Board Of Industrial Appeals legal adjudication level, and then at the Superior Court level, then as *fact de jure* the Superior Court per the 'ACT', per RCW 51.52.115, must not ignore the proper context of a Board Of Industrial Appeals IRREGULARITY, as also specifically based on a **Department lack of jurisdiction** to issue a specific Rejection Order, then illegally rejected my Neck Injury Claim at issue, then as *fact de jure*, a Department illegal **Segregation** of my Neck Injury, to then invoke CR 59, CR 60, *inter alia*, as ultimately **Segregation** is *fact de jure* a Question Of Law, ignored by the Board Of Industrial Appeals, and by Superior Court, then as a Board Of Industrial Appeals, and Superior Court 'abuse of discretion', and Board Of Industrial Insurance Appeals then as (this Appeal Superior Court) 'Prejudicial Error'.

## II. ASSIGNMENTS OF ERROR

### Assignments Of Error

- "1. The Trial Court erred by not considering, that the Board Of Industrial Insurance Appeals did not consider, if the Department on December 12, 2017 not possessing subject-matter jurisdiction, or any jurisdiction to invoke original Neck and Right Shoulder Injury Claim ZB21147, (on January 16, 2018, as on that date) now a Right Shoulder Occupational Disease claim only, and within Board Of Industrial Insurance Appeals jurisdiction only, as of December 12, 2017, but as Department non-jurisdiction basis on January 16, 2018, to Reject my subsequent Neck (only) Injury Claim ZB23273, on January 16, 2018.
- "2. The Trial Court erred by not considering, that the Board Of Industrial Insurance Appeals did not consider, that the Department specific to both Claim ZB21147, and Claim ZB23273, had no my Neck Injury medical history, known, or diagnosed Neck condition on record, prior to my Neck Injury January 30, 2017, from which to legally 'Segregate'...
- "3. The Trial Court erred by not considering, that the Board Of Industrial Insurance Appeals did not consider, that 'Segregation', is a 'legal concept', to be determined by the Department only, per the Industrial Insurance Act, not to be determined by a medical doctor.
- "4. The Trial Court erred by not considering, that the Board Of Industrial Insurance Appeals did not allow my filed Motion to have (specific only) an 'abuse of discretion', standard of review, at the Board Appeals level, to then allow (specific only) Department Claim manager testimony as legally proper based on 'abuse of discretion', standard of review.
- "5. The Trial Court erred by not considering, that the Board Of Industrial Insurance Appeals did not afford me as the Claimant/Appellant, the opportunity to invoke all Superior Court Rules available, to impeach the credibility of Olympic Interiors Inc., persons, based on 'Intentional) **Spoilation**', as then recognized by a Washington State Court.

"6. The trial Court erred by not considering, that the Board Of Industrial Insurance Appeals did not consider, that Intentional **Spoliation** by an employer disputing my January 30, 2017 Injuries, as Olympic Interiors Inc., in my case specific, does not shift the *prima facie* burden to me, as the Claimant/Appellant, until all 'clean hands doctrine' dynamics are considered.

"7. The Trial Court erred by not considering, that the Board Of Industrial Insurance Appeals did not consider, whether investigation into Olympic Interiors Inc., requested by me Michael J. Collins in July, 2017, was not completed as requested, to include my complaint of Olympic Interiors Inc., (Intentional) **Spoliation**.

"8. The Trial Court erred by not considering, that the Board Of Industrial Insurance Appeals did not consider, whether a statutory 'duty to preserve' is imposed on Olympic Interiors Inc., by way of RCW 51.16.070, and RCW 51.48.040, if my allegation of payroll fraud to cover-up my Injuries (type of work performed, and total hours I, Michael J. Collins performed such specific type of work) by Olympic Interiors Inc., was the basis of my investigation request, into employer Olympic, who disputed my Injuries.

"9. The Trial Court erred by not considering, and that the Board Of Industrial Insurance Appeals did not consider, whether, if no law supports Department specific 'Segregation', in my claim specific, then if not discretionary, as separate from Department 'abuse of discretion', (specific only) to Department non-jurisdiction January 16, 2018 Rejection Order in No's. "1,"4, herein, then Trial Court is in err to ignore my 'Exhausting my administrative remedies', Superior Court filed Petition For Writ Of Mandamus, if based on Department not discretionary, illegal 'Segregation', violation of Department 'duty owed', to support 'Segregation', with my Neck Injury medical history, if a 'duty owed' to support 'Segregation'...

"10. The Trial Court erred by not considering properly, my Michael J. Collins RCW 51.52.115 'Irregularity', argument, to include my 'Protected Property Interest', specific to Claim ZB21147 basis for Rejection of Claim ZB23273, filed in my Superior Court pleadings, and Trial Court ignored Department lack of jurisdiction January 16, 2018.

### Issues Pertaining To Assignments Of Error

1. Does the Department Of Labor & Industries have the jurisdiction to issue a January 16, 2018 Rejection Order specific to my Neck Injury only Claim ZB23273, but documentarily provably directly based on Right Shoulder Occupational Disease Claim ZB21147, that was within Board Of Industrial Appeals jurisdiction only, as of December 12, 2017)?

Assignment Of Errors No's. "1,"4,"9,"10

2. Does my Neck Injury, or any,,, my Neck medical history,,, become a dispositive 'duty owed' requirement for the Department, as must be a known, and diagnosed, Neck medical condition, prior to, my January 30, 2017 Neck Injury, as required by Board Of Appeals precedent, and as required by Department ,,,Segregation Rules,,, to legally ,,, 'Segregate' ,,, my Neck Injury Claim ZB23273?

Assignment Of Errors No's. "1,"2,"3,"9,"10

3. Was it a Department violation of a 'Question Of Law', to illegally 'Segregate' my Neck Injury only Claim ZB23273, as 'Segregation' is *fact de jure*,,, a 'legal concept',,, not a medical concept,,, then 'Segregation' ,,, cannot be ultimately determined by a medical doctor?

Assignments Of Errors No's. "2,"3,"9,"10

4. Did the Board Of Industrial Insurance Appeals, and then the Superior Court both commit ,,, 'Prejudicial Errors' ,,, by not granting, my Motion to request (Board Of Appeals), then not recognizing (Superior Court) my 'abuse of discretion' standard of review,,, at the Board level, as would have been dispositive to then compelling Claim manager testimony as proper, as the 'material witness' specific to Department lack of Jurisdiction January 16, 2018, and (Department illegal ,,, 'Segregation' ,,, November 14, 2017, and January 16, 2018), as Board Of Appeals, Department legal counsel Balch, and Superior Court, as a ,,, game-changer,,, invoked out-of-context, *McDonald v Department Of Labor & Industries 104 Wn. App. 617 (2001) Division II Court Of Appeals,,, where inter alia, McDonald never Motioned,,, for an 'abuse of discretion' standard of review,,, at the Board Of Appeals level, McDonald never filed his Raised objections and Errors at the Board Of Appeals level, I, Michael J. Collins as CABR proven, did, as would have been a game-changer as compared?*

Assignments Of Errors No's. "1,"2,"3,"4,"8,"9,"10.



5. Do all Superior Court Rules, and to include all Superior Court Rules Of Evidence, apply to invoke my ability to impeach the credibility of an employer, Olympic Interiors Inc., who disputed my Neck Injury as allowed, per the 'Act', but not after,,, Olympic Interiors Inc., committing provable Intentional **Spoliation**, as recognized by a Washington State Trial Court and provable fraud upon the original and sole tribunal as the Department, and my prevailing upon which, does not shift *prima facie* burden of proof, until Olympic fulfills its statutory 'duty to preserve'?

Assignments Of Errors No's. "5,"6,"7,"8

6. Does the ,,, 'clean hands doctrine' ,,, and as supported in-context to my claims specific, by 'Black's Law Dictionary', also apply to an administrative process, that is governed by Superior Court Rules, as the Department is an 'original and sole tribunal', then any type of fraud committed upon the 'original and sole tribunal' as governed by Superior Court Rules CR 59, and CR 60, render as a nullity, and void, a Department January 16, 2018 Neck Injury Rejection Order, as based on Olympic fraud, upon the original and sole tribunal, and Department lack of jurisdiction, and Department illegal 'Segregation' ,,, if, no medical doctor ever determined, that I, Michael J. Collins, somehow, did not sustain a Neck Injury?

Assignments Of Errors No's. "1-"10

7. Does Olympic Interiors Inc., deserve any form of 'equitable relief', when their RCW 51.16.070, and RCW 51.48.040, statutory 'duty to preserve', never addressed by an auditor, and/or by the Department, as 'original and sole tribunal', in my July, 2017 requested investigation, as the very document, as my January 30, 2017 Time-sheet, Olympic Interiors Inc., would have preserved to complete its payroll February 10, 2017, real-time documents, my injury details, as signed by me, and signed by my immediate supervisor January 30, 2017, and February 2, 2017, then as documented, proves my January 30, 2017 Neck, and Right Shoulder Injuries,,, somehow is missing, as violating Olympics' statutory 'duty to preserve',,, and as ignored by the Superior Court?

Assignments Of Errors No's. "1-"10

8. Does Olympic Interiors Inc., own Board Of Appeals Testimony as solicited my me Michael J. Collins, defy fraudulent documents, as submitted to the Department, as the 'original and sole tribunal', by way of Olympics' Employer Quarterly Reports, and as subject of my Michael J. Collins' July, 2017 investigation request, and as submitted by Olympic during the discovery process, as intentionally deceptive, and fraudulent, then demand my investigation request, as not time-barred, also to be dispositive?

Assignments Of Errors No's. "1-"10

9. Does a 'Segregation' Order with no medical, or legal foundation from my Neck medical history, then no law supports as discretionary by the Department as specific, and that the Board Of Industrial Insurance Appeals, and Superior Court ignored, but as I, Michael J. Collins, am 'Exhausting my administrative remedies', to file a Petition For Writ Of Mandamus as the Department has a 'duty owed' me, to provide prior to my January 30, 2017 Neck Injury, medical history of a known, and diagnosed Neck condition, and the law that supports the Department, issuing a 'Segregation' Rejection Order, without the benefit of Neck medical history, and what law supports the Department lack of legal discretion, as specific, to 'Segregation', to include, Department 'lack of jurisdiction' January 16, 2018?

Assignments Of Errors No's. "1,"2,"3,"9,"10

10. Why does a Board Of Industrial Insurance Appeals 'Irregularity', based on Department lack of jurisdiction January 16, 2018, and based on my approved (Claim ZB21147 'Protected Property Interest', that does not allow the Department to alter, or reject, without providing me a pre-deprivation process) as denied, by the 'original and sole tribunal', get ignored by the Superior Court as Trial Court, as factual 'Irregularity'?

Assignments Of Errors No's. "1-"10

All my listed Assignments Of Errors, are Superior Court Prejudicial Errors.

### III. STATEMENT OF HISTORY OF THE CASE

As my Michael J. Collins' OPENING BRIEF in Superior Court, CP at 5-66, that clearly, and substantively explains my history as my January 30, 2017 Right Shoulder, and Neck Injuries while working [hanging] 4'x12'x5/8" thick sheetrock for Olympic Interiors Inc., after only approximately 5-1/2 hours into the day, then only able to perform light-duty the remainder of my 32 total hours of work time with Olympic, then timely filing an Injury Claim per the Industrial Insurance Act, the manner in which the Department rejected my Neck Injury Claim, is clearly consistent with Department 'abuse of discretion' as specific only, then warranted for the then Board, to grant my request for an 'abuse of discretion' standard of review. CABR at April 6, April 12, 2018 Motions. CABR at 49,59,60,61.

But as (hereafter) the Board, did not grant my request for an 'abuse of discretion' standard of review, and then I was not granted my request CABR 570-571, for specific Claim manager testimony, as the 'material' witness in my Appeal, and dispositive to my Question Of Law. CP at 5-9.

This was never as specific, properly considered by the Superior Court, specific to what settled law, precludes Claim manager testimony, when provably, my Neck Injury Claim, after my Right Shoulder was medically

adjudicated as a Right Shoulder Occupational Disease Claim ZB21147, but was Rejected as my subsequently, but timely filed Neck Injury Claim ZB23273, as was Rejected January 16, 2018, based directly on Right Shoulder Occupational Disease Claim ZB21147, that was within the Board's jurisdiction per the Industrial Insurance Act, (hereafter) the 'ACT'.

Then both Department [my] illegal 'Segregation', not supported by any known statutory, or settled law, per the 'ACT', CABR at 556-558, 563-565, is at issue, never decided as specific, by Superior Court, CP at 112-118, then legally supported my Superior Court Request For Remand, and Department lack of jurisdiction January 16, 2018, supports my legal position that an RCW 51.52.115 'Irregularity' took place, as 'material' Claim manager testimony denied me at the Board level, but not decided as specific by Superior Court, supports a 'Prejudicial Error' at the Board level, and at the Superior Court level, as no medical doctor has ever determined, that I somehow did not injure my Neck.

Then a medical doctor testimony at the Board level, from which I as dispositive solicited as medical testimony specific to, why, as IME Examiner testimony, was never asked to consider a Neck Injury, IME testimony defining pre-existing, and whether that same IME Examiner would have known in 2017, whether any Neck condition was known,

diagnosed, or treated, prior to my January 30, 2017 Neck Injury, or if my Neck condition was ever 'active',,, prior to my January 30, 2017 Neck Injury, becomes of paramount legal relevance in my argument in this Appeal, never as specific decided by the Board, or Superior Court, as 'Prejudicial Error'. CP at 112-118. CP at 12. CABR 1202.

In my 'matter of first impression' case, my former employer at issue, Olympic Interiors Inc., as disputing my January 30, 2017 Neck Injury as specific, was under an investigation, requested by me in July, 2017, as an investigation as specific results, were never communicated to me as completed as specific, to my original investigation request, as the key term is (specific),,, then when the Board acquired Claim ZB21147 jurisdiction December 12, 2017, Docket 17 25495, the specific fraud Olympic Interiors Inc., committed upon the Department as the 'original and sole tribunal', was never Board, or Superior Court decided as specific, to the 'clean hands doctrine' as specific to whether Olympic Interiors Inc., as disputing my January 30, 2017 Neck Injury, as they have a legal right to dispute, entered the legal process with 'legal dirty hands', never Board, or Superior Court decided, specific to Superior Court Rules, I was Board denied to pursue, to include Exhibits rejected. CABR at 1,3,4,5,6,7,8,9,10, as Board-Superior Court 'Prejudicial Error'.

#### IV.

#### ARGUMENT

##### A. Pertaining to Department Lack of Jurisdiction

Specific to RCW 51.52.050(2)(a), the Department cannot possess specific claim subject-matter jurisdiction, or any such specific claim jurisdiction, once the Board has accepted jurisdiction of a former Department specific claim issue, once the Department has written a specific Appealable Order, and that specific Appealable Order has been timely Appealed to the Board. App. **Ex. A**

As the Department wrote its Claim ZB21147 September 14, 2017 Neck Segregation Order, as confirmed in its November 14, 2017 Order, which allowed my Right Shoulder as a statutory Occupational Disease, then Olympic Interiors Inc., whom I worked for only 32 hours, then not a chargeable employer, specific to Occupational Disease, the Department had no Neck medical history revealing any medical record, as no such known, diagnosed, or treated Neck problem, prior to my January 30, 2017 Neck Injury. The Board accepted jurisdiction December 12, 2017. App. **Ex. A**. CABR 1,3,4,5,6,7,8,9,10, as Fowble rejected documents.

Shortly thereafter the Board accepting Claim ZB21147 jurisdiction December 12, 2017, as Docket 17 25495, both the Department, and Olympic Interiors Inc., counsel requested, and I signed approval for,

they, opposing counsel, to research my Neck medical history, and they found no prior to my January 30, 2017 Neck and Right Shoulder Injuries, no,,, known, diagnosed, or treated Neck condition, problem, or injury.

Both Department, and Olympic Interiors Inc., counsel then knew, by requesting my Neck medical history prior to my January 30, 2017 Injuries, if there ever was any such Neck medical history, that this specific criteria was very relevant, and dispositive, as to whether any Department 'Segregation' of my Neck Injury, would be proper, or legal.

So this Department, and Olympic Interiors Inc. counsel request for my Neck medical history prior to my January 30, 2017 Injuries, solidifies my Department illegal November 14, 2017 'Segregation' Order Argument.

Then the 'Irregularity' of the Board specific to subsequent Neck Injury only Claim ZB23273, as Docket 18 10796, becomes apparent when the Board, then Superior Court, never considered whether the Department possessed any such subject-matter jurisdiction, when the Board heard the issues on Appeal from Claim ZB21147, that the Department had subsequently surrendered jurisdiction to the Board, December 12, 2017, when the Board heard the issues on Appeal specific to Claim ZB23273, as my Neck Injury only Claim ZB23273, as Rejected directly based on prior Occupational Disease Claim ZB21147, that was within the Boards'



jurisdiction January 16, 2018, when the Department directly based its rejection of my Neck Injury only Claim ZB23273 from the specific subject-matter criteria from Claim ZB21147, by invoking Claim ZB21147 subject-matter criteria, already in the Board's jurisdiction, to reject Neck Injury only Claim ZB23273 January 16, 2018.

See Superior Court August 18, 2020 ORDER ON APPEAL as CP at 112-118. CP at 119-124. "The record does not establish that the application of established facts to the law was somehow irregular or based on untenable grounds of for some untenable reason". sic.,

So Superior Court would have completely ignored the specific lack of jurisdiction by the Department, to improperly invoke subject-matter criteria from Right Shoulder Occupational Disease Claim ZB21147, as specific, and without subject-matter jurisdiction, when it rejected Neck Injury only Claim ZB23273 January 16, 2018, as in<sup>1</sup> an unseasonable time, and in an improper manner.

<sup>1</sup>\_\_\_\_\_ From Blacks',,,, Irregularity is,,, "A violation, or non-observance of established rules and practices. Or, the want of adherence to some prescribed rule or mode of proceeding; consisting either in omitting to do something that is necessary for due and orderly conducting of a suit, or doing it in an unseasonable time or improper manner"....

Every defect in practical proceedings,,, as distinguishable from defects in my pleadings. To mean, L&I non-jurisdiction to issue January 16, 2018 Claim ZB23273 Rejection Order, based on Claim ZB21147, that as of December 12, 2017, was in Board Jurisdiction.

Then as the original and sole tribunal, the Department not possessing subject-matter jurisdiction to invoke Right Shoulder only Occupational Disease Claim ZB21147, as in the Boards' jurisdiction as of December 12, 2017, when Department rejected my Neck Injury only Claim ZB23273 January 16, 2018, renders that illegal invocation a nullity, it is void, and the consequences of invoking Claim ZB21147 January 16, 2018, to reject Neck Injury only Claim ZB23273 has no force, and effect, then as *coram non judice*.

Then as the original and sole tribunal, the Department cannot confer Claim ZB21147 jurisdiction where none existed as specific, as it cannot make my Neck Injury only Claim ZB23273 Rejection Order, directly based on a now, as of January 16, 2018, void Right Shoulder only Claim ZB21147 'Segregation' Order,,, valid.

Then as the administrative Appellate Board cannot confer Claim ZB21147 jurisdiction where none existed as specific as described, as it cannot make my Neck Injury only Claim ZB23273 Rejection Order, directly based on a now, as of January 16, 2018, void Right Shoulder only Claim ZB21147 'Segregation' Order,,, valid.

Then if this Prejudicial Error by the Board, was not considered by Superior Court, as it was not, then is Superior Court 'Prejudicial Error'.

B. Department Illegal Segregation Directly Relates to  
Department November 14, 2017 Order.

Per the 'ACT', the 'Segregation Rules', must apply.

'Segregation' is a legal concept, as a determination to be made by the Department, (Medical Examiners' Handbook pg.34). It is not a medical concept, then not to be determined by a medical doctor. No criteria in RCW 51.32.080(5), or RCW 51.32.100, apply to my Neck Injury specific. No statute per the 'ACT' legally supports 'Segregation' of my Neck Injury specific to my original Right Shoulder and Neck Injuries Claim ZB21147, or my subsequent Neck Injury only Claim ZB23273.

And the 'pre-existing' dynamic, does not work against me, as legally 'pre-existing', must also be directly related to 'active', now, and/or a condition that was at one time in past history 'active', then a medical history would be a matter of medical record as proof.

See *McGuire v Department Of Labor & Industries* 179 Wash. 645, 38 P.2d 266 (1934)... My citation to *McGuire*, RP pgs.32-34, all, and in my Superior Court OPENING BRIEF, CP at 12. CABR 803-805 as to 'Lit up', or 'Lighting Up', or 'Lighted Up', is also a legal concept.

See IME Examiner Dr. Joan Sullivan specific CABR transcript testimony. CP at 47-50. CP at 55-62.

In neither Dr. Joan Sullivans' August 21, 2017, or November 8, 2017

'reports', does Dr. Joan Sullivan ever describe 'Lit Up' as specific.

This becomes relevant specific to an asymptomatic, not known, never diagnosed, or treated Neck condition. As an injury can medically, then legally,,, 'Lite Up', an asymptomatic, not known, never diagnosed condition. Even if I had a neck degeneration condition from the day I was born,,, if that condition as my Neck condition was, asymptomatic, not known, never diagnosed, and never treated, it can be 'Lighted Up' by a subsequent Injury per the 'ACT', and the underlying asymptomatic, not known, never diagnosed, and never treated Neck condition, does not preclude a subsequent injury claim being Department approved.

And, I do not need to prove my January 30, 2017 Neck Injury  
2  
somehow caused my cervical spine disease... RP pg.32 at 18-24.

2

In addition to *McGuire*,,, CP at  
*Dennis v Department Of Labor & Industries* 109 Wn.2d 467, 745,  
P.2d 1295 (1987),,, "the underlying disease does not need to be  
employment caused"... also *Miller v Department* 200 Wash. 674  
94 P.2d 764 (1939),,,

"We have held in an unbroken line of decisions, that if an injury,  
within the statutory meaning, lights up or makes active a latent or  
quiescent infirmity or weakened physical condition occasioned by  
disease, then the resulting disability is attributed to the injury, and  
not to the preexisting physical condition"... cont. *Miller*,,,

"If this be true with respect to a weakened physical condition resulting  
from disease, it must likewise be true with respect to a similar infirmity  
resulting from some structural weakness of the body"...

In my July 31, 2020 Superior Court Hearing legal argument, see RP pg.33 at 17-25, RP pg.34 at 1, I made it clear to Superior Court Judge Henderson, that nowhere in either Dr. Joan Sullivan's reports as August 21, 2017, and App. **Ex. B** November 8, 2017, as CABR Exhibits, does Dr. Joan Sullivan ever as specific use the term 'Lit up'.

See Dr. Joan Sullivan's testimony CP at 47-50, and CP at 55-62, Dr. Joan Sullivan testimony is mistakenly stating what is in her reports, as, "my opinion was",,, not,,, 'my now testimony opinion is'... CP at 62. And this Dr. Sullivan mistake, is a 'lit up' 'legal concept' game-changer.

Then Judge Henderson could have easily referenced those 2 Dr. Joan Sullivan reports, to verify dispositive Questions Of Facts, then Questions Of Law and Facts, but see in Judge Henderson's August 18, 2020 ORDER ON APPEAL CP at 112-118, CP at 113, Judge Henderson states, "Dr. Sullivan also testified that she did not feel that Mr. Collins' underlying disease was lit up and that she based that opinion on his history, symptoms, examination, and x-rays"...

So Judge Henderson does not accurately state Dr. Sullivan's CABR record, as testimony mistakenly referencing what she actually decided in both her CABR offered Exhibit reports.

Judge Henderson, if he actually performed due diligence, specific

to 'lit up' as a 'legal concept', then a Question Of Law, and,,, if Judge Henderson had actually performed due diligence, and also referenced my July 31, 2020 argument, RP all,,, he would also have seen Dr. Sullivans' testimony CP at 55, "I was never asked if he had an injury, I did not address it, and so I can't give an opinion"... See CP at 115 \*\*\*"occupational exposure". My question,,, 'You testified that you never addressed an injury'? Answer,,, "Yes"... \*\*\*I filed an 'ACT' injury claim...

So this is as specific alone, at least an 'abuse of discretion' by Superior Court Judge Henderson, because I based the life-blood of my legal case since my Board Appeal, that my original \*\*\*injury claim, was just that, an \*\*\*injury claim. So why would the Department not ask Dr. Joan Sullivan to give an opinion on an injury? This is as specific alone, an \*\*\*'abuse of discretion' by the Department, ignored by the Board Of Industrial Appeals Judge, ignored by the Board Panel, and \*\*\*statutorily incorrect as err,,, in August 18, 2020 ORDER ON APPEAL. \*\*\*CP at 115.

But, see as a powerful game-changer in my favor, and as supported by *McGuire* cited pg.16 herein, Dr. Joan Sullivan testimony CP at 50, and see my entire page questioning of Dr. Sullivan CP at 50, specific to ,,, 'active'... See my incontrovertible citation to *McGuire*, in my January 09, 2020 APPELLANTS OPENING BRIEF, as CP at 12.

As this Court sees the powerful dynamic as ,,, 'active' ,,, from *McGuire* in-context to my legal argument specific to Department illegal 'Segregation' of my Neck Injury, that is not supported by any my medical history known, diagnosed, or treated neck condition, but ignored by both the Board, and by Superior Court, as my question to Dr. Joan Sullivan, and her answer,,, "I can't know when I do an IME if something is active".

Again refer to *McGuire*, whether a condition was ,,, 'active' ,,, or not, prior to my Neck Injury, supersedes any prior medical "reports and testimony do not reach the real question in this case" ,,, and see my question of what can cause my Neck Anterolisthesis? See also App. **Ex. B, D**, Dr. Sullivan answer, "It can be caused by trauma, and it can be caused by simple degeneration"... CABR 10/09/18 pg.30 at 23-24.

And see how Dr. Sullivan contradicts her 'testimony mistake, and her reports', (pg.18 herein), see in-context to "reports and testimony" from *McGuire*, but Dr. Sullivan supports a possible Neck Injury in CP at 58 as, her testimony,,, "The date at which he – if this was injury and not degenerative, to fuse take months. So this is not a new injury"... Keep this in-context, as my Neck Injury took place January 30, 2017, Dr. Sullivan viewed cervical x-ray August 23, 2017, months later.

And Dr. Sullivan supports the August 23, 2017 cervical x-ray report "cannot exclude fracture", App. **Ex. D**, and CP at 49, 58,59,60,61,62, in her testimony as an "occult injury", as, 'displacement', then as Neck anterolisthesis, is Neck 'displacement', as Dr. Sullivan testifies to "major trauma",,, as January 30, 2017, I was struck in the head by a 124 pound full sheet of sheetrock, as "major trauma" see Dr. Sullivan, "A good example is a stress fracture. You usually do not see that on plain x-rays"... Again see August 23, 2017 x-ray report as App. **Ex. D** "cannot exclude fracture"...

Also, Dr. Sullivan testimony at CABR **1022**, "And, yes, certain things can make you aware that you have the disease"... This supports *Miller, Dennis, and McGuire*, as my Neck condition was 'not active', known, diagnosed, or treated, prior to my January 30, 2017 Neck Injury.

So as from *McGuire*, pg.8 in my Superior Court APPELLANTS OPENING BRIEF ft.nt 2 as CP at 12, as dispositive, directly supports  
3  
my legal argument at the Board, in Superior Court, and herein.

<sup>3</sup>  
*McGuire* "Without knowing their opinion on the matter of whether the arthritis was active or inactive prior to the injury, their reports and testimony do not reach the real question in this case. We find no evidence in the case bearing upon the question which overcomes the evidence offered by the claimant, from which it would seem to irresistibly follow that the arthritic condition prior to the accident was dormant or inactive. It appears to us that from the beginning the department, as to this claimant, proceeded upon an incorrect theory of the law"...



*McGuire* continued,,, "We recognize that the decision of the department is prima facie correct and the burden was upon the claimant to overcome it, and that the claimant has done in this case. In fact, as already indicated, the evidence offered by the claimant upon the vital issue has not been met by the department".

I ask this Court to again find, that when both Department, and Olympic Interiors Inc., legal counsel requested of me, and as I gave my signature approval for they both to research my Neck medical history upon filing my Appeal in November, 2017, and they found no 'vital issue' *McGuire*, of any ,,, 'active' ,,, neck condition prior to my January 30, 2017 Neck Injury, then the Department proceeded forth upon an incorrect theory of the law,,, to mean 'Segregation' ,,, as 'Segregation' ,,, is a legal concept, then as a Question Of Law.

Then any 'pre-existing' dynamic from Dr. Joan Sullivan, becomes defeated by the never ,,, 'active' ,,, prior to my Neck Injury Question Of Fact, and Question Of Law specific to 'Segregation'.

See Dr. Joan Sullivan testimony CP at 56-57...

My question,,, 'Doesn't pre-existing condition, Dr. Sullivan, also refer directly to something that was a known - - prior known diagnosed and treated condition, yes or no? Dr. Sullivan answer,,, Yes.

See all Dr. Joan Sullivan CABR, and CP filed testimony, is powerful and as dispositive in my favor as,,, "The reason it was said to be pre-existing was based on studies that were done of his neck.

Those studies reflected disease in his neck that could - - take time to develop"... As you refer to the labor intensive work that *McGuire* did, and very labor intensive work that I, Michael J. Collins did for many years, if,,, I had a symptomatic ,,, 'active' ,,,, condition, my 'very heavy' ,,,, (as material weight classified as such by the Washington Department Of Labor & Industries in its Medical Examiners' Handbook), type of work performed [hanging] sheetrock, would have revealed any such if,,, ,,, 'active' ,,,, condition, long before my January 30, 2017 Neck Injury. Then pre-existing must directly relate both medically, and especially legally,,, with 'Segregation'... Or just the fact that a medical doctor states pre-existing is not *prima facie* in the Departments favor to exclude my Neck Injury Claim, or more importantly, the Department cannot legally invoke 'Segregation' ,,,, based on an IME that stated I had a pre-existing condition, based on an x-ray only, but no medical history of any ,,, 'active' ,,,, neck condition, or problem.

See the Medical Examiners' Handbook pg.34, as 'pre-existing' must be legally supported by the Department specific to 'Segregation'...

But Superior Court in its ORDER ON APPEAL, never as specific addresses my 'Segregation' legal argument, and the vital issue of whether my Neck condition was ever ,,, 'active' ,,, prior to my January 30, 2017 Neck Injury. And Superior Court never addresses whether the Department proceeded upon the correct theory of the law, as specific to 'Segregation' ,,, and my having overcome my *prima facie* burden specific to ,,, 'active' ,,, and 'Segregation', as again Superior Court in its ORDER ON APPEAL CP at 112-118, "The record does not establish that Mr. Collins presented a *prima facie* case that would have survived a motion to dismiss"... CP at 118.

Then in my further legal argument, as Claim manager testimony denied me, improperly by the Board, and not recognized as such by Superior Court, as 'Prejudicial Error' by both, did legally establish my *prima facie* legal argument of illegal 'Segregation' by the Department, as specific based upon Judge Hendersons' ignoring Dr. Joan Sullivans' testimony, that established for the record, my Neck Injury Claim timely filed June 20, 2017 was a Neck Injury Claim, and Dr. Joan Sullivan was all the medical testimony I needed for the record, to clearly survive a motion to dismiss, as the Department in my case specific, as in *McGuire*, proceeded upon an incorrect theory of the Law, as a Question Of Law.

Then Superior Court Judge Hendersons' ORDER ON APPEAL CP at 117, "The law requires that a causal relationship between the incident and the physical condition be established by medical testimony",,, was fulfilled by Dr. Joan Sullivan "testimony",,, as she acknowledged an "incident",,, see pg. 20 herein, "So this is not a new injury"... "And, yes, certain things can make you aware that you have the disease",,, from my pg. 21 herein, Dr. Joan Sullivan is factually testifying that my Neck Injury did legally 'light up' my degenerative neck condition that was asymptomatic, and not ,,, 'active'...

Even if the Department attempts to argue that my January 30, 2017 Neck Injury did not somehow 'light up' my not 'active' neck condition, Dr. Sullivan acknowledged the "cannot exclude fracture" from the August 23, 2017 neck x-ray. And CP at 58, Dr. Sullivan "testimony" ,,, sic., "Had I been the provider and really looked at this gentleman, he would have flexion/extension views done at the minimum to determine if he had instability"... As a fracture, as a 'stand alone', would not even need to 'light up' any otherwise asymptomatic not 'active' degenerative condition.

This also as my gravamen, triggers the jurisdictional defect, from the Department by invoking Right Shoulder Occupational Disease only Claim ZB21147, to reject Neck Injury only Claim ZB23273 January 16,

2018, when the Board already had Claim ZB21147 jurisdiction since December 12, 2017. This jurisdictional defect of which causing the 'Irregularity', that is not factored-in as a Question Of Fact, and as a Question Of Law, when Judge Henderson, cites boiler-plate perfect-world-scenario case law, that would not, and does not, take my specific jurisdictional defect into consideration, and does not take Department illegal 'Segregation' into consideration, then as *a fortiori* 'Prejudicial Error' by Superior Court.

C. Department Claim Manager Exemption from  
Testifying by the Board, and Affirmed by Superior  
Court, as both Board, and Court, Affirms Prejudicial Error

Refer to my argument in my APPELLANTS OPENING BRIEF  
as CP at 5-66 start as pg.6 ft. nt.1, ignored by Superior Court.

Specific to any legal context, per the 'ACT', the Department  
cannot reject an injury claim without 'medical evidence' that my original  
INJURY claim as timely filed, did not take place.

The Department did not possess any such medical evidence,  
before rejecting my Neck Injury only Claim ZB23273 at issue, as they  
would not allow a medical exam to be based on my Neck Injury at issue.

Then In re: Robynhawk Freebyrd-Brown, BIIA Dec., 02 10758  
(2003),,, is an appropriate, persuasive, and contextually direct citation.

Even though the Department requested of me Michael J. Collins, to file a new claim, as becoming Neck Injury only Claim ZB23273 for my Neck Injury only, App. **Ex. H**, after they the Department allowed my original Right Shoulder, and Neck Injuries Claim ZB21147 to be medically adjudicated as a Right Shoulder Occupational Disease claim only, (as my Right Shoulder surgeons' report stated separate conditions in my Right Shoulder, and fact,,, the Department, by adjudicating my Right Shoulder as an Occupational Disease only,,, Olympic Interiors Inc., would not be, and then factually was not, a chargeable employer), the Department would not allow a scheduled Neck Injury Examination to take place on January 19, 2018, by pre-meditatively rejecting my Neck Injury only Claim ZB23273 January 16, 2018, so the Department requested (to make it appear originally, that the Department was actually providing me due process), as scheduled Neck Examination, would not prior to rejection, reveal my Neck Injury, prior to Department rejection, as a Department bully tactic.

If this Court Of Appeals contemplates a financial motive, as to how the Department financially benefited from allowing my original Right Shoulder, and Neck Injuries Claim, to be adjudicated as a Right Shoulder Occupational Disease only claim, and never allowing my Neck Injury to be adjudicated as a Neck Injury, where Olympic Interiors Inc.,

would be a chargeable employer, as the employer of injury,,, specific to my January 30, 2017 Injuries, I only worked a total of 32 hours,,, (out of over 40 years in, and around the sheetrock [hanging] trade), for Olympic, because of my January 30, 2017 injuries, then as the Department would not be able to render Olympic Interiors Inc. a chargeable employer anyway, because of the few history hours I worked for Olympic Interiors Inc., which is why Olympic as not being a chargeable employer specific to a Right Shoulder Occupational Disease, never disputed my Right Shoulder Occupational Disease Claim ZB21147.

And the Department would have cleverly calculated what they would have saved on denying allowance of, and medical adjudication of, my Neck Injury, the comparison of what they did not charge Olympic Interiors Inc., for my Right Shoulder, as to what the Department saved by abusing their discretion in the ignominious manner in which they the Department rejected my Neck Injury only Claim ZB23273, is proven.

The Department 'abuse of discretion', as I Michael J. Collins based my request to the Board for an 'abuse of discretion' standard of review, as Department 'abuse of discretion' directly related to a Department 'jurisdictional defect', specific to January 16, 2018 Neck Injury only

Claim ZB23273 claim rejection, as based on no supporting Department medical evidence, or subject-matter jurisdiction January 16, 2018, as a Department Neck Injury only Claim ZB23273 rejected, based directly on invoking Right Shoulder Occupational Disease Claim ZB21147 criteria, that as of January 16, 2018 was per Board jurisdiction, on that date, then legally supported an 'abuse of discretion' standard of review requested by me, CABR April 6-12, 2018 as those Board Motions, for an 'abuse of discretion' standard of review, was not based on any ['entitlement to benefits'], as specific, but only specific to Department January 16, 2018 (Department known,,, 'jurisdictional defect',,,, as my Right Shoulder Occupational Disease Claim ZB21147), as my Neck Injury only Claim ZB23273 rejection was directly based, then would have compelled an 'abuse of discretion' standard of review by the Board, and this game-changing Board denial, was ignored by Superior Court, as both a Board, and Superior Court Prejudicial Error, as the Claim manager as the 'material witness', testimony, was 'material' to my Appeal.<sup>4</sup>

<sup>4</sup> Then *In re: Gail Conelly, BIIA Dec., 97 3849 (1998)*,,,, supports my legal argument that the Board, and Superior Court, are in err, to deny me Claim manager testimony at the Board level, as requested at the Board level. From Conelly,,, "In matters of claims administration, not involving the actual adjudication of entitlement to benefits, the standard of review is abuse of discretion"...



So as the Department January 16, 2018 known,,, Department 'jurisdictional defect',,, is verified by App. **Ex. A**, but CP at 53, as my Neck Injury Claim ZB23273 "Rejected claim as not *prima facie* because there is a current medical opinion that states the worker's DDD is not related to his occupation and was not lit up, or aggravated by the incident of 1/30/17 wherein the worker described being struck in the head by a sheetrock panel",,, proves Department Claim manager rejected Neck Injury only Claim ZB23273, on Right Shoulder Occupational Disease Claim ZB21147 as legally erroneous. But this document also proves that this Department Claim manager is with intent,,, dishonest,,, as nowhere in either of Dr. Joan Sullivans' 2017 reports, does she ever describe a 'legal concept',,, of not 'lit up'... Then Superior Court could have easily referenced as fact, but still chose to cite as incorrect, what Dr. Sullivan actually describes in her reports, as ORDER ON APPEAL CP at 112-118. Then a Superior Court 'abuse of discretion', and as Prejudicial Error, as my Neck Injury only Claim ZB23273 was rejected directly specific to Right Shoulder Occupational Disease Claim ZB21147 as a January 16, 2018 Department 'jurisdictional defect', then Superior Court knowingly not correctly citing what Dr. Joan Sullivan actually decided in her reports,,, is a Superior Court 'Prejudicial Error'.

CP at 112-118, App. **Ex. A**, Superior Court ignored as 'Prejudicial Error'.

All Department Claim manager Mark Fowble created documents as I, Michael J. Collins offered at the Board, as of course knowingly would be rejected, as Mark Fowble was not compelled to testify, are CABR as Rejected Exhibits 1,3,4,5,6,7,8,9,10.

My CABR April 6-April 12, 2018, MOTIONS for IAJ/Board to allow me 'Abuse of Discretion' Standard of Review, and CABR Board July 31, 2018 ORDER REMANDING FOR FURTHER CONSIDERATION, and Boards' Supervisors' erroneous justification denying Claim manager testimony under heading 'Testimony of the Claims Manager', pg.1 of that document, and 'Standard of Review on Appeal' pg.2 of document, as the Board is clearly in denial, as 'Prejudicial Error', specific to my 'abuse of discretion' standard of review request, as my case is a perfect example of when a Board 'abuse of discretion' standard of review is judicially warranted, but Board not correct standard of review was affirmed by the Superior Court as 'Prejudicial Error'.

See App. **Ex. H**, as a Claim manager Mark Fowble created document as,,, "you will need to file a new claim for a specific injury",,, proving Mark Fowble offered my new Neck Injury only Claim ZB23273, making it appear he was providing me due process, but as duplicitous.

Then see Docket 17 25495 10/9/18 Rejected Ex.2 as Mark Fowble 11/03/17 IME Addendum request to IME Dr. Joan Sullivan, as App. **Ex. B**, where Fowble states,, “The cervical condition has been segregated, but this has been disputed”,,, as Department original Neck Injury ‘Segregation Order’, of September 14, 2017, was Protested by me, and Department final affirming ‘Segregation Order’ of November 14, 2017, was within Board jurisdiction December 12, 2017.

See Fowble is asking Dr. Sullivan to decide whether any “cervical degeneration has been permanently aggravated by the right rotator cuff arthropathy”,,, knowing he Fowble would get a favorable opinion, as was such an erroneous medical request, and as my original Right Shoulder, and Neck Injuries Claim ZB21147 was not based on by me, when I filed my original injuries Claim ZB21147, and Fowble knew it.

This is clearly adjudicatively oppressive by Fowble, and a clear ‘abuse of discretion’ by Fowble, warranting an ‘abuse of discretion’ standard of review by the Board, and ignored by Superior Court.

Then this ties together my legal argument specific to ‘Segregation’, in-context to, *In re: Dennis Johnson, BIIA Dec., 17 18840 (2018)*,,, in-context specific to, see my pg.6 ft. nt. 1 at 18, my APPELLANTS OPENING BRIEF as CP at 10, (‘Department claim ZB21147

Segregation Order, as based on my original claim ZB21147 **not** medical history diagnosed neck condition'). The Department 'Segregation Order' in my case specific, is without medical history evidence to legally support 'Segregation' of my Neck Injury. So *Johnson*, and my case specific, prove that there must be a medical, historical, and legal basis for 'ACT' 'Segregation'. And see from *Johnson*, I, Michael J. Collins, was at the Board level, and in Superior Court, 'forced to prove a causal relationship between my non-existent, no prior to my January 30, 2017 Neck Injury, and no neck condition medical history, as no ,,, 'active' ,,, neck condition, prior to my January 30, 2017 industrial neck injury'. I am in no way legally compelled to do that, as my case specific, in proper context to *Johnson*.

But again see Superior Court ORDER ON APPEAL CP at 112-118, as CP at 117 at 5-6, specific to my having to prove 'causal relationship', but as Superior Court based on an erroneous legal premise of Department illegal 'Segregation' as never Superior Court addressed. But it is Department illegal 'Segregation', that is dispositive in my case.

To further provide Dr. Joan Sullivan testimony at CABR 1034, that supports my legal argument, "the fact that he had disease in his neck was actually unknown, only found out by virtue of the fact that, unbiased, I ordered x-rays of his neck"... That was not until August 21, 2017.

See from *Johnson*, the Department Order was REVERSED AND REMANDED as of Department Order date. My case January 16, 2018.

Find *Robynhawk*, *Johnson*, and *Conelly*, as unpublished BIIA only opinions, are still *fact de jure* legally persuasive, as legally cited by the specific criteria in yet another BIIA unpublished opinion, *In re: Diane K. Deridder Docket 98 22312...*

First see from *Deridder*, *State v Fitzpatrick* 5 Wn. App. 661, 668 (1971) *Division II Court Of Appeals*,,, 'only Court Of Appeals unpublished opinions are not cited as authority', as "Unlike the Board, the Court Of Appeals is a court of record with a particular statutory ability to not publish certain decisions, which would otherwise be subject to publication".

But Board non-leading decisions can be cited in a Board Appeal,,, even Board Orders, or decisions that are not published as "significant",,, decisions, pursuant to RCW 51.52.160. So trial court in my Board Appeal, then must recognize *In re: Pablo Garcia Dckt. No. 05 15239 (March 28, 2006)*,,, as Board should have cited, to supersede the out-of-context premise of *McDonald v Department Of Labor & Industries* 104 Wn. App. 617 (2001) *Division II Court Of Appeals*,,, as Department Claim manager Mark Fowble testimony compelling. And as Board unpublished decisions are not 'secret decisions', known only by a particular attorney, then not unfair to cite, as are easily researched, and located, and do not need to become common law, as the 'ACT' is not based on common law...

See from *Deridder* pg.2 at 33-44, "We agree with our industrial appeals judge that it is appropriate to rely on Decisions and Orders of the Board that are not published as "significant" decisions, pursuant to RCW 51.52.160".

As noted by the U. S. Supreme Court: "Adjudicated cases may and do, of course, serve as vehicles for the formulation of agency policies, which are applied and announced therein. They generally provide a guide to action the agency may be expected to take in future cases. Subject to the qualified role of stare decisis in the administrative process, they may serve as precedents"...

My case is that "future cases" to which our U.S. Supreme Court refers, even an administrative Board Appeal per the 'ACT'. RP pg.18 at 19-25. Superior Court ignored *Pablo Garcia*,, RP pg.19 at 1-5, I cite in proper context supersedes *McDonald*, in my February 11, 2020 APPELLANTS REPLY pg.7 as CP at 80, when *Pablo Garcia* as controlling, clearly is a superseding legal argument as Judge Henderson cites *McDonald* in his ORDER ON APPEAL pg.6 at 20-22 as CP at 117, I correctly cite, as *Pablo Garcia* confirms my ability to call Department Claim manager Mark Fowble as a 'material witness' to my 'material' Issues On Appeal, that require an 'abuse of discretion' standard of review, that *McDonald* never timely requested at the Board level, nor did *McDonald* timely file Raised Objections and Errors at the Board, But I did. RP pg.11 at 4-9.

See my CABR 59-60-61, 81-83, and as specific to Mark Fowble testimony as not exempt by any type of immunity, as Mark Fowble was not a Policy Maker, that may be immune as specific. Not Fowble.

My substantive argument in my APPELLANTS OPENING BRIEF, D. pgs.13-32, as CP at 17-36, as also my incontrovertibly defeating Board citing of *Nationscapital* cited as erroneously by Board IAJ simply because it is a Division II case, and my defeating U.S. v Morgan, where the fact that Policy Makers are at issue is the deciding factor, not at all relevant in any context to my case, and as Superior Court ignored.

Pg.17, at 2-5, as CP at 21, the deliberative process privilege is inapplicable "[W]here the decision-making process itself is the subject of the litigation, as is often the case in agency litigation"... As my case.

And I do not need to specifically delve into 'deliberative processes', only reasons, grounds, and when,,, a Department decision was made.

Remember ,,, 'when' ,,,, from *Pablo Garcia* is ever so relevant in my case, as Fowble January 16, 2018 rejection jurisdictional defect as material.

From *Deridder*,,, pg.7 at 37-47, pg.8 at 1-3 "All the claims manager need do is read the new application for benefits, and ascertain the status of prior claims filed by the injured worker. Competent claims administration practice requires a claims history check whenever an application for benefits is filed"... This is for claim validity, (or segregation) validity purposes, and for allocating, and coordinating benefits between claims, if more than one claim is open. See (or segregation) is specifically as (parenthetically) cited,,, in *Deridder* pg.7 at 47...

So even if pursuant to common law a trial Court should not recognize unpublished opinions by a Court Of Appeals, that does not apply to Superior Court review of a Board administrative decision to then affirm, as the *Deridder* case, and U.S. Supreme Court, allow the Board IAJ to cite unpublished opinions, and in my case specific the premise of *Pablo Garcia* is controlling for the Board as specific to what *McDonald* failed to timely file, and what I did timely file to Motion, and/or Request.

5

See my July 31, 2020 in-court legal argument RP at 11-18 and all... ER 801(d)(2) is also the deciding factor in *McDonald*, that is not relevant to my case as to why Mark Fowble is not exempt from testimony, as,

5

"*McDonald's* argument fails because L&I's decision to reopen was not an admission by a party opponent. ER 801(d)(2). The trial court reviewed the BIIA's decision, not L&I's. The BIIA took its own evidence, reviewing *McDonald's* application to reopen his claim de novo. Thus, L&I's deliberative processes were irrelevant at trial where the jury's task was to review the BIIA decision"... RP pgs.11-18 all.

So because *McDonald* attempted to invoke an erroneous Rule Of Evidence. "Thus,,, L&I's deliberative processes were irrelevant at trial".

And,,, the Court found that 'it is more likely that *McDonald's* degenerative low back condition was aggravated by his activity in sweeping out his own attic, than that his low back strain resulting from his injury would have aggravated his past history back injury'... My paraphrase.

And again, *McDonald* never timely raised his objections, or called a Department witness at the Board level, as to why then the Division II found, "*McDonald* does not assign error to them. Accordingly, they are the established facts of this case." I did raise Objections/Errors at BIIA.

I, did timely file Mark Fowble on my Witness list, at the Board Level.



D. Olympic Interiors Inc., Dispute of My NECK Injury  
Claim is Based on its Payroll Document Falsification,  
And its INTENTIONAL **SPOILIATION**

Olympic Interiors Inc., INTENTIONAL **Spoliation** is relevant to my argument, and as dispositive, as it was, and is also relevant to my legal argument, that the Department illegally Segregated my Neck Injury, as specific to Claim ZB21147, and specific to Claim ZB23273, because the the Department wanted to protect Olympic Interiors Inc., because they knew they would share the same financial interest overall.

See in my APPELLANTS OPENING BRIEF CP at 64-65, as my Investigation request. This is an ostensible update letter to me by the Department, specific to my July 25, 2017 original complaint filed to the Department specific to Olympic Interiors Inc., payroll document fraud, and INTENTIONAL **Spoliation**.

See from that CP at 64-65, the Department is only utilizing the Classification Services staff. That is a farce. All Classification Services staff do, is determine whether whatever type of work I, Michael J. Collins performed, that Olympic falsely filed to L&I, specific to January 30, 2017 thru February 2, 2017, was classified with a proper classification code.

See Board Rejected Ex.'s 1-2 as Olympic Interiors Inc. fraudulent Time-sheet, and Olympic Interiors Inc., fraudulent Payroll stub.

See as Board Docket 18 10796 RP09/25/2018 Olympic Interiors Inc., Discovery (only) produced Falsified Time-Sheet as CABR Ex. list Rejected Ex.1. See as Board Docket 18 10796 RP09/25/2018 Olympic Interiors Inc., February 10, 2017 Falsified Payroll Document as CABR Ex. list Rejected Ex.2.

So even though 3 Olympic persons testified as timely, and as correctly served, as called by me to testify, the IAJ, and Board rejected Exhibits, as 2 of those 3 Olympic persons who testified would easily by my direct examination questioning, be able to establish foundation for those CABR Rejected Exhibits 1-2, at issue, that proved fraud on the part of Olympic Interiors Inc., who is disputing my January 30, 2017 injuries by altering/concealing specific type of work I, Michael J. Collins performed for them, to cover-up the very injuries they are disputing.

I asked the Department to also include the Office Of The Attorney General, and to include an auditor to investigate Olympic Interiors Inc., as a timely filed investigation request by me July 25, 2017.

This would have to also include an investigation specific to RCW 51.16.070, and RCW 51.48.040, because the very document, as my January 30, 2017 date of injuries real-time documented, with specific detailed injuries as documented and signed by me, and signed

by my immediate supervisor Victor Lopez, on my last day worked for Olympic Interiors as was February 2, 2017, was on the back side,,, of the very Time-Sheet that I, as an Olympic Interiors Inc., employee, am responsible for filling out hours, and type of work details each day, then signing, my supervisor must sign, and I, or my supervisor submits to the office to be used to determine my payroll paycheck, then Olympic Interiors Inc., has an 'ACT' RCW 51.16.070, and RCW 51.48.040 statutory 'duty to preserve' that payroll document.

This Olympic Interiors Inc., statutory 'duty to preserve', was never, to the time of this writing, never as specific investigated by the Department.

I, Michael J. Collins, was in the office of Olympic Interiors Inc., on Friday February 10, 2017, only 8 days since my last day worked for Olympic Interiors Inc., and I, in a deliberate, but polite manner, on that day, requested a copy of that very Time-Sheet, at issue, that Olympic Interiors Inc., has a statutory 'duty to preserve', for my records, as I, could not have known when I turned-in to my immediate supervisor on February 2, 2017, that very Time-Sheet, that I would be not able to regain an exact copy of that very Time-Sheet for me, upon request.

But that day February 10, 2017, Olympic would not provide for me that very January 30, 2017 INJURIES DETAILED,,, signed Time-Sheet.

Notice the fraudulent Time-Sheet as CABR Rejected Ex.1, there is no signature on the signature line. This is very suspicious, as it should be, because this is a fraudulently produced Olympic Interiors Inc., Time-Sheet, computer generated after-the-fact, and for my Discovery demand only. My actual week of January 30, 2017 thru February 2, 2017 signed by me, and signed by my immediate supervisor INJURIES DETAILED,,, Time-Sheet,,, was written in pencil, and pen, as I did not possess a computer while working as a sheetrocker on a drywall job.

See my APPELLANTS OPENING BRIEF CP 5-66 as CP at 34-45, and my incontrovertible Intentional **Spoliation** argument, and Division II Court Of Appeals case *Homeworks Constr., Inc., v Wells* 133 Wn. App. 892, 138 P.3d 654 (2006),,, that spawns other cited authority validating why Intentional **Spoliation** as Olympic Interiors Inc., has committed, then because it is Intentional **Spoliation**, does not shift the burden of proof of my January 30, 2017 NECK INJURY, until Olympic produces the very original, factual Time-Sheet that I demanded since Board Discovery.

The because Olympic Interiors Inc., **Spoliation** is Intentional, Washington Courts will recognize Intentional **Spoliation**.

Then the sanctions that must be imposed against Olympic

Interiors Inc., must be specific to my case, as whether a Defense Motion For Summary Judgment, or Defense Motion To Dismiss, per either CR 56(c), or CR 12 (b)(6)(c), movant 'bad faith' is the same.

See Olympic Interiors Inc., head corporate secretary, whom sat 3 feet away from me January 27, 2017 when I filled out my pre-employment paperwork, as Doug Bagnell, who created, and signed the June 22, 2017 **MEMO**, the content of which is the basis for the Department Rejection, and illegal 'Segregation', of my Neck Injury.

Refer to Bagnell Docket 18 10796 RP09/25/2018 testimony. Bagnell contradicts the content of the very **MEMO** he created, as created for the sole intent to dispute my injuries. See the **MEMO** as Docket 18 10796 09/25/2018 Accepted Ex.3. in my APPELLANTS OPENING BRIEF as App. Ex. No.4. Let's review Bagnell testimony.

I ask this Court to take judicial notice, that the IAJ, and the Board Panel, would not accept as admissible, Docket 18 10796 RP09/25/2018 Rejected Exhibits 1-2, as the Olympic Interiors Inc., fraudulent, and falsified Time-Sheet, and Payroll documents.

But the IAJ, and the Board Panel, had no problem accepting as admissible, the Docket 18 10796 RP09/25/2018 **MEMO** as, the **MEMO**, was in Olympic Interiors Inc., best interest, and in

the Departments best interest, even though I would impeach the **MEMO**, with specific Bagnell Testimony. CABR at 968, 983, 988-990.

Bagnell at Docket 18 10796 RP 09/25/2018 CABR at 968, as transcript page 33. See Bagnell has convenient memory lapse, and denies the timecard (Time-Sheet as same for this argument purposes),,, content for an individual employee. See transcript pg.33 at 23-24 my disbelief in my response, because it is simply not believable. But remember what Bagnell is doing. He is justifying the no signature,,, in CABR Rejected Ex. 1, fraudulent Time-Sheet, and denying the content of an actual truthfully produced Time-Sheet.

Bagnell testimony CABR at 983-985, as transcript pg.48 forward, at 19-20, 'coding error', and as to what I would have as specific, requested from my timely filed July, 2017 Department investigation request, into why Olympic Interiors Inc., submitted false information as its Supplemental Quarterly Reports March 31, 2017 to the 'original and sole tribunal', as is the Department, where Olympic Interiors Inc., falsified the specific type of work I performed for them, that was was a much lighter duty type of work,,, framing,,, that would never had injured me in the exact manner in which I was injured, because I would not have been [hanging] heavy sheetrock panels as a ,,framer...

Bagnell is referring to CABR Docket 17 25495 RP10/09/2018 Accepted Ex. 5 as my June 20, 2017 email to Bagnell describing the incorrect information on my payroll documents, after my February 10, 2017 visit to Olympic Interiors Inc., office, inquiring of the same, as on that day receiving what was an incorrect Pay stub with false information.

Now see Bagnell testimony CABR at 984, as transcript pg.49, as the continuation from Bagnell testimony transcript pg.48 at 24-25,,, Bagnell,,, "I was basically just saying - - basically what happens is, a drywall installer can either be (continues to pg.49), insulating, they can be framing, or they can be hanging"... This is true, only because framing is a trade, as part of the overall commercial drywall genre, but,,, I, Michael J. Collins was never trained as, and have never hired on as, a 'framer',,, with any drywall employer. Bagnell personally,,, hired me.

See remainder of testimony transcript pg.49.

See CABR at 990, as Bagnell testimony transcript pg.55, at 6-7.

Bagnell, is contradicting his **MEMO** content that clearly states,,, "I do specifically recall Michael having some obvious mobility restrictions with his neck... He seemed unable to turn his neck fluidly"...

But see Bagnell testimony pg.55 at 6-7, "I didn't notice you had a problem the neck"... sic., See remainder of pg.55, as CABR at 990.

Reminder to this Court review, that all Olympic Interiors Inc., persons CABR testimony, was on 09/25/2018 as Docket 18 10796.

See CABR at 975-976, as Bagnell testimony transcript pgs.40-41.

See my question to Bagnell pg.40 at 24-25. 'So, Mr. Bagnell, why exactly -- in what capacity was I hired'... See Bagnell answer pg.41 at 1. "As a drywall installer"... Pg.41 at 2-3 My Question, 'Was I hired under any other capacity'. Bagnell, at 3, "No"...

So this Bagnell testimony proves as fraud, the content of Olympic Interiors Inc., Docket 18 10796 RP09/25/2018 IAJ, and Board Rejected Ex.'s 1-2, showing me Michael J. Collins as working 29 of 32 total hours as a framer, when I did not work 1 minute as a framer.

See CP 47 App. Ex. No.6 supported by RAP 11.4(i), RAP 10.4(c), and also supported by ER 804(b)(1), as demonstrative or illustrative documents, for this Court to review as persuasive, as relevant to the power Olympic Interiors Inc., possessed, by convincing the Department to Reject my Neck Injury Claim ZB23273, which is the result of the spawn of the Department illegal 'Segregation' of my original Claim ZB21147 based on false information provided the Department, and the IAJ, and Board would not allow me to have as those Rejected Exhibits 1-2 as admissible Exhibits, so my RAP 11.4(i) documents will allow me to



impeach as I must do as well, Olympic Interiors Inc., as their fraud was the only information the Department used to reject my Neck Injury, as the Department has no medical evidence to support their denial of my Neck Injury, as though *Robynhawk* pgs. 26,34 herein, states they must, when I present my Oral Argument, in this Court Of Appeals Division II, as Doug Bagnell yet once again for expediency, but as now contradicts himself by changing his position once again, to affirm the content of IAJ, and Board Docket 18 10796 RP09/25/2018 Rejected Ex. 1 as a fraudulent Time-Sheet, and Rejected Ex. 2 as a fraudulent Pay stub.

This as IAJ, and Board never afforded me the right to impeach Olympic Interiors Inc., though Superior Court Rules allow me to, either on direct, or cross examination. And as this was ignored by Superior Court, and as the Department based its Rejection of my Neck Injury only Claim ZB23273, directly on an illegal 'Segregation' of my Right Shoulder Occupational Disease Claim ZB21147, that the Department as time specific, did not possess the subject-matter jurisdiction to do, this is as Superior Court not properly considered, Prejudicial Error.

So as this Court reviews CP 47 App. Ex. No.6, and determines that any Order written by the Department, as the 'original and sole tribunal', per the 'ACT',,, then legally tantamount to a court, specific to CR 59,

and CR 60, then the Department January 16, 2018 Order to Reject my Neck Injury only Claim ZB23273, as based on an illegal 'Segregation' of my Neck Injury per my original Claim ZB21147 as must be void specific to Department jurisdictional defect as in the Boards jurisdiction as of December 12, 2017, specific to Claim ZB21147, must also be reversed as Olympic Interiors Inc. fraud upon the 'original and sole tribunal', as the Department in its January 16, 2018 Neck Injury Rejection Order, now illegal, must also be reversed as specific to CR 59(a)(1)(9), and as CR 59(a)(4), as 'newly discovered evidence', as App. **Ex.'s E,F**, was not in my possession,,, until November 4, 2019, after my Docket 17 25495, and Docket 18 10796 Board Appeal was/were complete.

Then CR 60(3) 'newly discovered evidence', and CR 60(4)(5), should compel relief from the Department January 16, 2018 Order, as based directly on Olympic Interiors Inc., fraud, and is void because of the Department jurisdictional defect, as of December 12, 2017, when the Board had jurisdiction over Claim ZB21147, that the Department as fact, directly invoked to Reject Claim ZB23273.

Refer to Superior Court ORDER ON APPEAL CP at 114, 117 as Superior Court Judge cites specific Board testimony by Olympic Interiors Inc., persons to include mastermind Doug Bagnell,

but this same Superior Court Judge, does not see my Motion, see CP at 126-129, to compel Olympic Interiors Inc. appearance at the July 31, 2020 Hearing, when Olympic Interiors Inc., withdrew from this case, but only specific to Docket 17 25495. If Olympic Interiors Inc., legal counsel withdrew from my Appeal, then Superior Court Judge then as unjust, only invoked Olympic Interiors Inc., prior testimony in his ORDER, for sole intent to justify he finding against me, when I could not attack Olympic Interiors Inc., at the Board Hearing on 09/25/2018, specific to ER 806, that clearly allows me to do so, or I could not argue against Olympic Interiors Inc. fraud on July 31, 2020 at that Hearing, or argue to my favor specific to RP10/09/2018 Docket 17 25495 Accepted Ex.5, or RP 09/25/2018 Docket 18 10796 Accepted Ex.3, against Olympic Interiors Inc., because Olympic Interiors Inc., was not present July 31, 2020 to defend themselves.

Superior Court did not see my MOTION For The Court To Compel Attendance Of Olympic Interiors Inc., counsel at the July 31, 2020 Hearing, specific to both Claim ZB21147, and Claim ZB23273, but citing Olympic Interiors Inc., persons specific testimony in the Departments' favor, as Superior Court 'abuse of discretion'. Bagnells' App. Ex's. E,F, proves he has no prior testimony, or **MEMO** credibility.

In Bagnells' App. **Ex. E** Bagnell swears under penalty of perjury, but

7. **Exhibit C**, is the fraudulent Time-Sheet that is RP09/25/2018

Docket 18 10796 Rejected Exhibit 1. Then Bagnell Declaration

8. **Exhibit D**, must include the redacted, but revealing Olympic Interiors Inc., March 31, 2017 Supplemental Quarterly Reports to the Department Of Labor & Industries, that must truthfully report the exact type of work as correctly coded as such, as sheetrock [hanging] only for 32 hours total, but does not. This triggers the question specific to the Department not conducting complete investigation into Olympic Interiors Inc., fraud on the 'original and sole tribunal', invoking CR 59, and CR 60.

Since this Olympic Interiors Inc. fraud was never corrected, as they had since February 10, 2017, and since my June 20, 2017 email as 10/09/2018 RP17 25495 Accepted Ex.5 to correct,,, this then verifies, as solidifies INTENTIONAL **Spoliation**, then as INTENTIONAL, the prima facie burden of proof of my January 30, 2017 INJURIES, still lies with Olympic Interiors Inc. mandate to produce my original real-time Injuries detailed signed by me, and signed by my supervisor, Time-Sheet.

See redacted Page 5 of 5 as I = install same as [hanging]. Then see Page 2 of 5 Olympic only submitted 2 install hours out of 32 hours actual install as my hours worked. Page 5 of 5 C = 1 hour scrap. The other 29 hours Olympic submitted as me 'framing' is a fraud upon the Department.

Olympic Interiors Inc., needed to cover-up my January 30, 2017 Injuries, as the specific work conditions I complained about January 30, 2017, specific to material handling, as Olympic was in violation of the Department Of Labor & Industries guidelines for a 1 person 'install' practice, then as such, would have adversely affected Olympics' 'experience rating'. Thus Olympics' motive for their fraud, that has placed an unfair burden on me in this Neck Injury Claim ZB23273.

By the time a sheetrocker, ie., [hanger], ie., installer, is needed on a commercial project, the 'framing' is already complete, to then [hang]. Because Olympic offered the after-the-fact fraudulent time-sheet to L&I, and me, they are not protected by work-product, attorney-client privilege.

E. My 'Protected Property Interest' denied, is directly, as legally related to, Department illegal 'Segregation', and Department 'Jurisdictional Defect'.

Article 1 Section 3 of our State Constitution, is never abrogated simply because I was deprived due process by the 'original and sole tribunal', as the Department under the Industrial Insurance Act.

Once my timely filed original Right Shoulder, and Neck Injuries Claim ZB21147 from my January 30, 2017 Injuries, was approved by the Department, as a Right Shoulder Occupational Disease Claim ZB21147, I possessed 'Protected Property Interest' in Claim ZB21147.

That as *fact de jure* means, my approved Claim ZB21147 cannot be altered, rejected, or illegally invoked by the Department, without

a pre-deprivation process, by the very entity, the Department, who would be responsible for its potential deprivation.

'Protected Property Interest', is conferred not by Legislative Grace, but by 'Constitutional Guarantee'.

Yes, even at the Board Of Appeals under the 'ACT', there is a prior decision based on an individuals' Constitutional Rights.

*In re: Danny B. Thomas Docket 40,655,,,* is a Board decision based on an equal protection under the law, and constitutional premise, as I as well, was constitutionally protected to share an equal right with an employer Olympic Interiors Inc., that was unfairly protected by the Department in the adjudication of my Claim ZB21147, and my Claim ZB23273, as they both as fact, shared a financial interest.

*Thomas* involves a 14th Amendment dynamic, but Article 1 Section 3 of our State Constitution, gives me equal rights, and does not allow a denial of my 'Protected Property Interest' per the 'ACT'.

So because a Board IAJ, or the Board Panel, must recognize even unpublished opinions, and because the Department cannot 'Segregate' my Neck Injury without a medical history of a known, 'active', diagnosed, and treated neck condition, prior to,,, my January 30, 2017 Injuries, and because the Department cannot invoke my Claim ZB21147 illegal

'Segregation' specific to Claim ZB21147, that as of Department Rejection of my Neck Injury only Claim ZB23273, January 16, 2018, that was as of December 12, 2017, already within the jurisdiction of the Board, then this 'Jurisdictional Defect' precludes this attempt by the Department to deny me due process, as fact proven.

If the Department 'legal adjudicator', which is what a Department Claims manager is, does not provide the pre-deprivation process, then the Board must provide what the very entity, the Department will not.

This Prejudicial Error by the Board, was ignored by the Superior Court in its ORDER ON APPEAL CP at 112-118, as Superior Court never even addresses my 'Protected Property Interest' in its Order, then a Superior Court 'Prejudicial Error'.

As a State Court can refer to Federal Law in my 'matter of first impression' case, where the Department with Intent, conducted a sham investigation against an employer Olympic Interiors Inc., that I, Michael J. Collins have proven INTENTIONAL **Spoliation** in the specific manner it submitted its employee reports to the Department, for the sole intent of covering-up the very injuries they dispute.

This investigation would have revealed my allegations as time proven, and would have Constitutionally guaranteed me due process.

It would have also guaranteed Olympic Interiors Inc., due process, as there is no law per the 'ACT' that exempts an employer from accountability in the information it the employer submits to the Department, that as specific, involves my right to fair, and full disclosure, as denied me by the Department prior to my Claim ZB21147 illegal 'Segregation', and my Claim ZB23273 illegal 'Segregation', & Rejection.

*Thomas* does not presume that the Board has the authority to decide whether the Board has authority to declare an „„act of the legislature„„ unconstitutional. But the Board does have authority to decide whether a statute per the 'ACT' gives authority to the Department, as a Claims manager, to 'Segregate' my Neck Injury only Claim ZB23273, based on an irrelevant (Claim ZB21147, and for which I possessed 'Protected Property Interest'), as by doing so, the Department denied me equal protection under the law, and by way of its 'Jurisdictional Defect'.

Since November 14, 2017 I demanded the Department provide the statute that supports its illegal, no medical history support, 'Segregation'.

See *Mathews v Eldridge* 424 U.S. 319 96 S. Ct. 893, (1976)„„ and *Goldberg v Kelly* 397 U.S. 254 90 S. Ct. 1011 (1970)„„ as a Social Security claim, and a Welfare claim respectively, where 'Procedural Safeguards' must be present, to guarantee a pre-deprivation process.



F. ARGUMENT SUMMATION

See July 31, 2020 RP all

The material reason why my July, 2017 Investigation request is so relevant to my original Neck, and Right Shoulder INJURY Claim ZB21147 as Department is original and sole tribunal per the 'ACT', ignored by Board, and Superior Court, as \*\*\*'Prejudicial Error', is, my Report Of Injury, App. **Ex. C** would paint me as somehow dishonest, as Olympics' **MEMO** 5 days earlier June 22, 2017 CP at 51 App. Ex. No 4. to this day, Olympic cannot January 27, 2017 factually support, was never Department 'fact verified'.

And as Olympic will not produce the factual January 30, 2017 Injuries detailed, real-time documented, as my January 30, 2017 Neck, and Right Shoulder Injuries Time-Sheet, as then Intentionally **Spoliated**, does not shift burden of proof to me, until Olympic produces my January 30, 2017 Time-Sheet signed by me, and my Supervisor, but instead Olympic filed to the Department a fraudulent, not signed, after-the-fact, time sheet, as Dckt.18 10796 RP09/25/2018 CABR Rejected Ex.1. \*\*\*Department did not complete an Investigation, knowing Olympic had RCW 51.16.070, and RCW 51.48.040 'duty to preserve'. App. **Ex.'s E,F.** Olympic is not credible.

This was textbook Department 'abuse of discretion', \*\*\*commanding a Board 'abuse of discretion' standard of review, ignored by Superior Court.

Superior Court cites Olympic (not present July 31, 2020) perjurious testimony, protecting Olympic, CP at 114,117, as 'Prejudicial Error'.

When both Department, and Olympic Interiors Inc., filed their respective, and combined Motion to Dismiss my case at the Board level, since there was a subject-matter, and personal jurisdiction issue from below, at the Department, when they the Department invoked Claim ZB21147 already in the Boards' jurisdiction as December 12, 2017, when the Department on January 16, 2018 Rejected my separate Neck Injury only Claim ZB23273, directly, and factually based on Claim ZB21147, no longer in the Departments' jurisdiction when the Department invoked Claim ZB21147, January 16, 2018, and the Board IAJ, or Board Panel did not recognize this jurisdictional defect, and then Superior Court ignored this Board ignoring this Department jurisdictional defect, then as a Board level jurisdictional defect ignored, itself is an RCW 51.52.115 'Irregularity', then Superior Court not only by ignoring this Board IAJ, and Board Panel neglect, not only 'abused its discretion', but committed a 'Prejudicial Error', as Superior Court accepted a perversion of dismissal Rule CR 12(b) all. RP at pgs. 5-7.

My case specific is a model of why RCW 51.04.010 'welfare of its wage worker',,, must be 'liberally construed', to include Superior Court

interpretation of 'questions of fault' therein. As Olympic Interiors Inc., counsel has erroneously, since the Board Hearings, brought this 'no fault' legal argument, because I, as I have herein, and relevant, and as must be addressed, why the Department did not complete my timely filed Investigation Request into Olympic Interiors Inc., that is statutorily supported per the 'ACT' as RCW 51.16.070, and as RCW 51.48.040, specific to Olympic Interiors Inc., provably falsifying my Payroll documents, and Intentional **Spoliation** of the very signed by me, and signed by my immediate supervisor Time-Sheet, as real-time proving my January 30, 2017 Injuries, then 'no fault', as RCW 51.04.010 'regardless of fault', simply means, when I, Michael J. Collins got injured January 30, 2017, I must timely file an injury claim with the Department, and not a personal law suit against the employer specific to RCW 51.04.010. There is no more statutory construction legal meaning, to 'no fault', per the 'ACT', than that. RP pgs.35-36 all.

Then RCW 51.04.030(1) ,,, "without discrimination of favoritism" ,,, construction, was breached by the Department, ignored by the Board, as ignored by Superior Court. As see my Oral Argument July 31, 2020, in open court RP pg.11, at 4-8, where I properly invoke RCW 51.04.030 and specific to 'favoritism' the Department, the Board, and (Superior

Court in its ORDER ON APPEAL CP at 112-118, now on review by this Court Of Appeals Division II), showed the employer, Olympic Interiors Inc., as Superior Court ignored the 'clean hands doctrine' violated by Olympic Interiors Inc., and as must be recognized even in an administrative proceeding per the 'ACT', as they Olympic, disputed my very January 30, 2017 Injuries, that they Olympic covered-up, with its Intentional **Spoliation**, and false information it provided the Department App. **Ex.'s E,F**, where otherwise under honorable circumstances, an employer has every right to dispute, as the 'clean hands doctrine' 'Irregularity' was ignored, is a Superior Court 'Prejudicial Error'.

This, as Superior Court in a de novo review of a Board decision, need not decide the constitutionality of a statute, or rule, but it must apply the statute, rule, or applicable doctrine, as was part of the Board record in my Michael J. Collins' Board argument, specific to statutes, to hold the employer Olympic Interiors Inc., accountable, to not show 'favoritism',,, then must be Superior Court de novo applied as intended, as the Department as a jurisdictional defect, only with intent, illegally invoked irrelevant separate Right Shoulder Occupational Disease Claim ZB21147, where Olympic Interiors Inc., was not a 'chargeable employer',,, to directly, and factually Reject statutorily separate Neck

Injury only Claim ZB23273, to show 'favoritism',,, to Olympic Interiors Inc., who would then not be, as no employer would ever be, a 'chargeable employer' in my separate Neck Injury only Claim ZB23273.

To take 'judicial notice', Superior Court did not apply statutory legal intent correctly, as even if I can file a separate legal action against Olympic Interiors Inc., specific to RCW 51.24.020 'employer intentional injury',,, as for tort damages only,, that would not provide me Michael J. Collins, the (medical treatment) I would need for my Neck Injury only Claim ZB23273, as medical adjudication is only allowed per the 'ACT', specific to RCW 51.04.010, not (RCW 51.24.020, as "cause of action against the employer as if this title had not been enacted")...

"This title", to mean, RCW 51.04.010... "This title", must also mean, "favoritism", per RCW 51.04.030(1) as Department, Board, and Superior Court showed (Olympic Interiors Inc., as Department shares the same financial interest to Reject my Neck Injury only Claim ZB23273), ignored by the Board, then ignored by the Superior Court de novo review, but in my Board record, can be heard, and decided per the 'ACT', as under ,,, "this title", to litigate Department "favoritism" per the 'ACT', "this title "favoritism",,, separate from, as not precluded by RCW 51.24.020, at the Board, but as ignored by Superior Court, is 'Prejudicial Error'.

My Superior Court Petition For Writ Of Mandamus fulfills my  
RCW 7.16.160 Department, and Olympics' 'duty', supported by *Cena*  
*v State 111 P.3d 1190 (2005)*,,, to 'exhaust my administrative remedies',  
CP at 68-69 at Superior Court de novo level, as a Question Of Law,  
as a 'Segregation' legal concept matter of law, is proper specific to  
the legal fact that Department Claim manager Mark Fowble, who as  
an 'abuse of discretion' to show "favoritism" to Olympic Interiors Inc.,  
by not providing me an initial medical determination prior to Rejecting  
my Neck Injury only Claim ZB23273, knowing that a complete Depart-  
ment Investigation as I Michael J. Collins, timely requested in July, 2017,  
and that was directly material to my proving my January 30, 2017 Injuries,  
as a [he said, he said], injury dispute, never was completed, and as  
Mark Fowble knew as an 'abuse of discretion', that the Department knew  
it had no medical evidence to support its Rejection of my separate Neck  
Injury only Claim ZB23273, that he Mark Fowble agreed I must file, as  
because my original Right Shoulder, and Neck Injuries Claim ZB21147,  
now a Right Shoulder Occupational Disease only Claim ZB21147, as  
under honorable circumstances where there is not an open Investi-  
gation into the employers manner it conducted business specific to  
statutory mandate, a Claim manager has the discretion to decide a  
claim either by injury, or occupational disease, but without a nefarious

ulterior motive to simply protect Olympic Interiors Inc., these Mark Fowble dynamics are an 'abuse of discretion' as specific only, then commanded a Board 'abuse of discretion' standard of review, as Mark Fowble was not protected from a mandate to testify, as not correctly addressed by Superior Court, as Mark Fowble was the material witness in my Board Appeal as 'abuse of discretion' ignored by Superior Court, as *McDonald*,,, in *McDonald v L&I*,,, did not argue a Board 'abuse of discretion' review, as I did, then *McDonald* cited by Board (erroneously, CP at 115), is also Superior Court 'Prejudicial Error'.

This is all Mark Fowble 'abuse of discretion' as directly related to why he Fowble, invoked Claim ZB21147 to reject my separate Neck Injury only Claim ZB23273 1/16/2018 App. **Ex.J**, when the Department lacked subject-matter jurisdiction to invoke (Claim ZB21147, as in the Boards' jurisdiction, as of December 12, 2017), as being ignored by Superior Court is a Superior Court 'Prejudicial Error'.

But what was not discretionary on the part of Mark Fowble, was to invoke the 'Segregation' legal concept, when no statute per the 'ACT' supports Mark Fowble 'Segregating' my Neck Injury only under Claim ZB21147, or under my Neck Injury only Claim ZB23273. RP at pgs. 5-19. RP all...

See my defeating the erroneous argument by Department, and Olympic Interiors Inc., legal counsel specific to *In re Pers. Restraint Deyer* 143 Wn. 2d 384, 398 20 P.3d 907 (2001),,, as they attempt to make the comparison as absurd from *Deyer* to my case specific, where the Department Of Corrections Official in *Deyer*,,, had agency law that provided that Official to act in the correct, and legal manner he did, then because law supported the Official action in *Deyer*, it was a discretionary decision in *Deyer*. Then Writ Of Mandamus would not be *Deyer* proper.

Mark Fowble had no such statutorily, or any agency rule, that would have provided him discretion to invoke 'Segregation' of my Neck Injury, when no prior to my January 30, 2017 Neck Injury medical history reveals any known, diagnosed, or treated neck condition, to then subsequently legally 'Segregate', as a Question Of Law, and a Question Of Law and Fact, and as supported by *McGuire v L&I* herein, as no prior to my January 30, 2017 Neck Injury ever ,,, 'active' ,,, neck condition as a Question Of Law and Fact, does not support Department, and Olympic citation to *Deyer*.

I filed Docket 18 10796 Board request to ER 201(d)(e)(all) take "JUDICIAL NOTICE OF ADJUDICATIVE FACTS" in my Board pleadings, ignored by Superior Court, as the Department is the original and



sole tribunal 'legal adjudicator', is Superior Court 'Prejudicial Error', as, I had Claim ZB21147 'Protected Property Interest'. CABR June 8, 2018, as, why Board de novo and not 'abuse of discretion' standard of review?

And in *Deyer*, see my February 21, 2020 APPELLANTS' ADDENDUM 4: CP at 90-94, our State Supreme Court agreed with the Court Of Appeals Division 2, sic., that *Deyer* did not have a 'liberty interest', to his demands, for 2 reasons Olympic counsel fails to discuss, not the least of which is, RCW 72.09.490 provided the *Deyer* Corrections Official 'discretion', to establish, and implement 'uniform policy' as specific.

This 'uniform policy', as specific to Mark Fowble 'Segregation' of my Neck Injury only, under both Claim ZB21147, and Claim ZB23273, means, a Department Claim manager as the 'original and sole tribunal legal adjudicator', would never need to first investigate the claimants' medical history, to see if the Department can discover any prior to a (timely filed injury claim, as my Injuries claims were), medical record history of condition, to then be able to legally 'Segregate' a condition.

That is legally absurd. Then Mark Fowble had no Settled Law, and no Legislative Intent discretion, as specific only, to deny his administrative 'duty to act'. Fowble 'duty to act', 'not discretionary' was ignored by Superior Court, and is a specific Superior Court 'Prejudicial Error'.

Specific to November 15, 2019 Superior Court ORDER ON CLAIMANT'S MOTIONS FOR DECLARATORY JUDGMENT, FOR SPECIFIC REMAND, FOR WRIT OF MANDAMUS, AND TO CONSOLIDATE, CP at 1-4. CP at 68-69. And per 'IRREGULARITY',

RP all, in the court's discretion whether to consolidate, per CR 42(a), this November 15, 2019 decision by prior Judge Cuthbertson, is not timely precluded now because I did not file a timely Motion For Reconsideration then after November 15, 2019, because I Michael J. Collins could not have known of the implications of such denial to consolidate until just prior to June 26, 2020, when Olympic Interiors Inc., withdrew from this Appeal, but specific only to Claim ZB21147.

Then procedural rights of all parties, whether even specific to State Court 'justiciability', 'standing', and, 'Protected Property Interest', not court considered when Department counsel attempted to justify its Proposed ORDER CP at 1-4, to deny Consolidation, was whether Claim ZB21147 'jurisdictional defect' as of January 16, 2018, as that Claim 'Segregation' as the sole reason for Rejection of Neck Injury only Claim ZB23273, never considered by the Board as Board 'abuse of discretion', and ultimate 'Prejudicial Error', Department cites *Hawley v Mellem*,,, as its original Proposed Order pg.3, but a case with no 'jurisdictional defect', as game-changing, but again, both Claim ZB21147, and Claim ZB23273, required (both Claims) Superior Court presence, of Olympic Interiors Inc.,

July 31, 2020, even absent a formal CR 42(a) Consolidation, because Olympic Interiors Inc., was required to defend its own factual testimony at the Board, specific to RP09/25/2018 Docket 18 10796, and relation to CABR RP10/09/2018 Docket 17 25495 Accepted Exhibit 5, as my June 20, 2017 email to Olympics' Doug Bagnell, as specific type of work I Michael J. Collins performed for Olympic Interiors Inc., was a dispositive issue on Superior Court Appeal, as to how I was injured.

So when Department argues in its original Proposed ORDER that a 'Department Order segregated the condition as Claim ZB-21147', 'and the other Department Order rejected industrial injury as Claim ZB-23273', as "Therefore, each docket pertained to a different industrial claim",,, is misplaced, as based on out-of-context, *Hawley v Mellem*, for that reason alone, and *Hawley* had no combined issue, as illegal 'Segregation', based on Department RCW 51.04.030(1) "favoritism",, to Olympic Interiors Inc., that required the presence of Olympic counsel<sup>6</sup> at the July 31, 2020 Hearing, as it wrote a Joint Response to my Appeal.

<sup>6</sup> Then all subject-matter jurisdiction, personal jurisdiction, scope, and venue requirements do not preclude my Claims consolidation, as "subject-matter jurisdiction must be determined by considering each component action independently of the others; in which courts have indicated that consolidation could cure the problems caused by the absence of a party,,, in which courts have held the activities of a party in one component of a consolidation to be relevant to the courts' right to assert personal jurisdiction over him in another component"... *UCLA Law Review Vol. 42 (1995), Procedural Consolidation Original, and Appellate.*

See ORDER ON APPEAL CP at 115. Superior Court Judge cites *Ravsten v Dep't. Of Labor & Indus.* But in *Ravsten*, as in-context to my case, " We hold that the trial court court not overturn the finding of the Board and enter its own findings when the only support for such action was an acceptance of a medical conclusion from a lay witness"...

But yet Superior Court Judge CP at 117, cites Bagnell testimony See App. **Ex.'s E,F** and **MEMO** as CP at 51 App. Ex. No. 4, which is what the Department as the original and sole tribunal used only,,, to Reject, and illegally Segregate,,, my Neck Injury Claim ZB21147, and my Neck Injury Claim ZB23273, as there was no medical opinion that ever determined that there was no January 30, 2017 Neck Injury.

So as the Board gladly accepted this **MEMO** as Docket 18 10796 RP09/25/2018 Accepted Ex. No. 3, then *Ravsten* as specific to Superior Court Judge in my case specific, is undermining its own citation.

In-context, the Board accepted an Olympic Interiors Inc., **MEMO**, describing a medical conclusion from a lay witness, Doug Bagnell, see App. **Ex.'s E,F** as Bagnell has no credibility, and,,, my Investigation Request, and Department lack of jurisdiction to invoke Claim ZB21147 January 16, 2018 as Claim ZB21147 was already factually in the Boards' jurisdiction, App. **Ex. A**,,, and the Superior Court ignored the clear 'Irregularity' at the Board, as, my case is a textbook example of when a Board 'abuse of discretion' standard of review is warranted.

So when Superior Court cites CP at 115 *Ravsten and Gorre*,,, the Superior Court which also ignored my properly filed Petition For For Writ Of Mandamus, as Segregation based on no statutory, or policy support, then as not discretionary by the Department, the Superior Court could have reversed the Board decision, as a Board erroneous decision, specific to my prevailing argument herein, and as the Board who gladly accepted CP at 51 **MEMO** App. Ex. No. 4 but would not allow me to attack Olympics' credibility as the Board granted a Motion To Dismiss for Olympic who enter the legal process with legal dirty hands at it filed fraudulent information to the Department, as the original and sole tribunal, as no pre-deprivation process was ever afforded me at the Department, and ignored at the Board level.

From *Ravsten*, "On appeal from the superior court, the appellate court must ascertain whether there was substantial evidence to support the findings of the trial court" ... See CP at 114 for the following.

There is no substantial evidence to support,,, that the Board ever considered whether IME Dr. Joan Sullivan, ever was able to determine my Neck Injury. And my January 19, 2018 Neck Injury medical appointment was Department cancelled, after its January 16, 2018 Rejection, as based on no medical evidence, or no statutory support to Segregate.

CP at 115 Superior Court 'erroneously' cites *Gorre*,,, as based on an Occupational Disease. I never sought,,, a NECK Occupational Disease. *Gorre*,,, "The resolution of this case depends entirely upon statutory interpretation as a matter of law". Specific to Neck Injury, and Segregation.

V. CONCLUSION AND RELIEF SOUGHT

1. I seek for this Court Of Appeals Division II, to write a GR 14.1(c) 'reasoned decision', specific to entirety of my legal argument herein, as my 'unpublished opinions' as I cited below, and as I cite herein, are every much dispositive in my favor, as my Published Opinions cited, as 'reasoned decision' also based on violation of my 'Protected Property Interest', is Board level relevant, and 'jurisdictional Irregularity', as ignored by de novo Superior Court is a Superior Court 'Prejudicial Error'.
2. I seek for this Court Of Appeals Division II, to find that all 'abuse of discretion' acts by Department Claim manager Mark Fowble in my case specific, as not timely argued by *McDonald*, in Division II case *McDonald v L&I inter alia*, the in-context legal reason why Division II rejected *McDonalds'* legal argument, as I Michael J. Collins timely brought my 'abuse of discretion' argument then must be the correct standard of review at the Board level, as 'material witness' Fowble ignored by Superior Court, is a Superior Court 'Prejudicial Error'.
3. I seek for this Court Of Appeals Division II, to find 'reasoned decision' include both Department 'duty to act', and Olympic Interiors Inc., statutory 'duty to preserve', as not discretionary, as specific, be the legally correct basis for my Petition For Writ Of Mandamus filed, and if invite or order is ignored by Superior Court, is Superior Court 'Prejudicial Error'.

4. I seek of this Court Of Appeals Division II, to find specific to my incontrovertible legal argument at the Board level, and Superior Court level, that 'Segregation' as a 'legal concept', cannot be decided by a medical doctor, and 'Segregation' in my claim specific, is not medical history legal, and 'Segregation' ignored by Superior Court is a 'Prejudicial Error'.
5. I seek of this Court Of Appeals Division II, to find, and as included in its GR 14.1(c) 'reasoned decision', that the Board ignoring, then the Superior Court de novo review ignoring the Departments' 'jurisdictional defect' when the Department illegally 'Segregated' my Neck Injury, specific to both my Neck Injury Claim ZB21147, which Rejection of my separate Neck Injury only Claim ZB23273 was as not legally correct but as Claim ZB21147 directly based, must ultimately command a remand to the Department, to medically, and legally adjudicate my Neck Injury, as it completes an RCW 51.16.070, RCW 51.48.040 investigation, as the Department January 16, 2018 'jurisdictional defect' ignored by Superior Court, is Superior Court 'Prejudicial Error'.
6. I seek for this Court Of Appeals Division II, to find my Petition For Writ Of Mandamus correctly filed in Superior Court CP at 68-69 fulfills 'exhausting my administrative remedies', as Court Of Appeals invites/orders Trial Court to address, or Superior Court 'Prejudicial Error'.

7. I seek of this Court Of Appeals Division II, to find that a formal CR 42(a) Consolidation that was timely, and correctly requested by me Michael J. Collins Pro se, for the sole intent to avoid exactly what took place on July 31, 2020, to mean, Olympic Interiors Inc., withdrawing from my Appeal after their 'damage was done', to mean, after they Olympic Interiors Inc., sabotaged my original Right Shoulder, and Neck Injury Claim ZB21147, and my subsequent Neck Injury only Claim ZB23273, and Consolidation rejected as not supported by in-context or competent authority cited by the Department, yet affirmed by prior Judge Cuthbertson, then Olympic never having to answer to INTENTIONAL **SPOLIATION** as recognized by a Washington State court as INTENTIONAL, does not shift the *prima facie* burden to me, until Olympic Interiors Inc., provides the January 30, 2017 signed by me, and signed by my immediate supervisor Time-Sheet, that did real-time document my very injuries, that Olympic Interiors Inc., is disputing, if not be a formal CR 42(a) Consolidation per the 'ACT', still legally needs to be both Claim ZB21147, and Claim ZB23273 'jurisdictional defect', and ,,, 'Segregation' Question Of Law,,, combined Court Of Appeals Division II GR 14.1(c) 'reasoned decision', as Superior Court not considering, is its 'abuse of discretion', and its 'Prejudicial Error'.



8. I seek of this Court Of Appeals Division II, to recognize my case as a 'matter of first impression' case, mandating a competent written Response, not based on a perfect-world-scenario defense legal argument, and for this court to then schedule parties, to then provide an Oral Argument of my case, as must include an RCW 51.04.030(1) defense of Department to Olympic Interiors Inc., "favoritism", and Department Neck Injury adjudication denial to me, of that specific statutes' "uniformity" mandate, as the origin of injustice, as defended at a Court Of Appeals scheduled Oral Argument, to then include as a remand, in this Court Of Appeals GR 14.1(c) 'reasoned decision'.

9. I seek of Court Of Appeals Division II, award me Michael J. Collins Pro se, costs, of \$1,200 litigating this unfair case, and if relevant time-loss, as Department based on Olympic Interiors Inc., RCW 51.04.030(1) "favoritism", and Department Neck Injury adjudication denial to me, of that specific statutes' "uniformity" mandate, as the origin of injustice, as this Court Of Appeals includes in its GR 14.1(c) 'reasoned decision'.

On this day Michael J. Collins November 9, 2020  
Michael J. Collins Pro se  
PO Box 111483 Tacoma, WA. 98411  
(253) 348-5842 [michael.collins29@comcast.net](mailto:michael.collins29@comcast.net)

FILED  
COURT OF APPEALS  
DIVISION II  
2020 NOV 10 PM 12:38  
STATE OF WASHINGTON

DECLARATION OF SERVICE  
Division II Case No. 54939-5-II

I, Michael J. Collins Pro se, do hereby declare under penalty of perjury, and as a citizen of, and per the laws of the State of Washington, on this day as date listed below, did/will serve the opposing parties legal counsel of record as Valerie Balch for the Department, and as Ann Silvernale for Olympic Interiors Inc., an exact copy of these filed documents, as same day filed with the Division II Court Of Appeals.

**Original filed to:**

Court Of Appeals Division II  
950 Broadway, Suite 300  
Tacoma, WA. 98402

**Motion:** To Take Judicial Notice  
Williams Kastner & Gibbs PLLC  
Two Union Square  
601 Union Street, Suite 4100  
Seattle, WA. 98101-2380

**Copies by U. S. mail to:**

Washington State  
Office Of The Attorney General  
AAG Valerie Balch  
800 Fifth Avenue #2000  
Seattle, Washington 98104-3188

Holmes Weddle & Barcott  
Ann Silvernale  
3101 Western Avenue, Suite 500  
Seattle, Washington 98121-3071

Find my same day as filed, and as U. S. mailed to above opposing counsel, email confirmation, of such same day filing, and same day U. S. mailing.

If my Appeal Brief is e-filed to Division II, (not counted herein) Appendix documents only, must be separately, but same day, U. S. mailed to same.

Total pages: 88 (as relevant only if e-filed in Court Of Appeals Division II).

E-file signature confirmation only if e-filed in Court Of Appeals Division II

Michael J. Collins Pro se  
PO Box 111483 Tacoma, WA. 98411  
(253) 348-5842 email: michael.collins29@comcast.net

On this day Michael J. Collins Pro se November 9, 2020

This Brief Page No.

**Exhibit A** 3 Pages: Document showing December 12, 2017 Board Of Appeals retains Jurisdiction of Claim ZB21147... 2,4,11,12,13,15,26,32

**Exhibit B** 3 Pages: Department Claim Manager Mark Fowble created IME Addendum Request. "The cervical condition has been segregated". To include Dr. Joan Sullivan ADDENDUM  
A **CABR** rejected Exhibit, as Fowble did not testify.....14-26,31-50

**Exhibit C** 2 Pages: My original June 20, 2017 Injuries Claim ZB21147 June 27, 2017 Report description of both Injuries document.....24-25

**Exhibit D** My Dr. Sullivan ordered Neck x-ray, as Dr. Sullivan testified she would have ordered more workup, if she were the Provider determining an Injury, as Neck x-ray reveals "cannot exclude fracture. See in my APPELLANTS OPENING BRIEF as CP at 5-66, and my Appendix therein, Dr. Sullivan October 31, 2018 testimony pg.56, *et al*, as that Appendix Ex. No.13 as CP at 61.....16-21

**Exhibit E** Olympic Interiors Inc. Department filed falsified Payroll Document dated June 28, 2017, proving since February 10, 2017, Olympic never corrected its 29 of 32 hours 'framing' fraud, so this is the exact fraudulent information Olympic filed March 31, 2017 when they Olympic, filed their Supplemental Quarterly Reports. This is also RP09/25/2018 Dckt. 18 10796 Rejected Ex. 2, (as exact information as RP09/25/2018 Dckt. 18 10796 Rejected Ex. 1), as (Olympics' Doug Bagnell November 4, 2019 Declaration, referencing Declaration section 7. **Exhibit C** Timesheet)).....11,38-50,56

**Exhibit F** 9 Pages: Olympic Interiors Inc, Doug Bagnell November 4, 2019 Declaration, contradicting his CABR RP09/25/2018 testimony. RAP 11.4(i). See pg.40 at 24-25, pg.41 at 1-3 from Bagnell testimony. Then see Bagnell Declaration contradiction above **Exhibit E** 48-50,56

**Exhibit G** My APPELLANTS OPENING BRIEF as CP at 52 Appendix Exhibit No. 5, as Mark Fowble showing favor to Olympic Interiors Inc., attempt, and as they did, before-the-fact, unethically communicate to the IME Dr. Sullivan, to attempt to influence the IME before-the-fact, as Fowble 'abuse of discretion'.  
Mark Fowble is,,, U680.....14-26,31-70

This Brief Page No.

**Exhibit H** 3 Pages in order as Appendixed.

APPELLANTS OPENING BRIEF CP at 5-66 APPENDIX EXHIBITS  
\*\*\*7 and \*\*\*15, as CP at 47,53,64,65.....1-70

Department Claims manager Mark Fowble created documents.

Page 1. Fowble proving he asked me to file what is Claim ZB23273  
as my separate NECK INJURY only Claim ZB23273, as I timely  
did, and I set-up a scheduled appointment with a Dr. McNair.

Page 2. Fowble acknowledging that I have a right per the 'ACT',,,  
to have my "initial" NECK INJURY only Claim ZB23273 medical  
evaluation, which was with Dr. McNair.

Page 3. Fowble stating,,, "Dr. McNair did not connect your  
cervical degeneration disc disease to your employment"...

Then this Fowble comment, is clearly based on an Occupational  
Disease, as my Neck Injury, illegally 'Segregated', specific to  
Occupational Disease Claim ZB21147, not my separate NECK  
INJURY only Claim ZB23273...

Dr. McNair was never able to evaluate me January 19, 2018, as  
Fowble had already filed for Dr. McNair research purposes, on that  
day January 19, 2018, as I sat in Dr. McNairs' waiting room, and as  
I was informed on that day January 19, 2018 by Dr. McNair, that  
my separate NECK INJURY only Claim ZB23273, had actually  
been Rejected 3 days earlier, January 16, 2018.

Dr. McNairs' "will defer causation determination to the consultant",,,  
simply means, consultant is IME Dr. Joan Sullivan,,, as you read  
all of Page 3, as,,, "As we already have an IME opinion",,, but  
IME Dr. Joan Sullivan did not render a medical opinion based on a  
NECK INJURY, or as my NECK INJURY only Claim ZB23273.

3 Pages .....31

**Exhibit I** See my APPELLANTS OPENING BRIEF CP at 53 as  
Appendix Exhibits No.'s 6,7, (1 same Exhibit), Fowble "lit up" lie.

Dr. McNair never examined me January 19, 2018. This is same as  
Page 3 of **Exhibit H** above, but to highlight the lie by Fowble, as  
Dr. Sullivan never stated in her reports, the legal concept of, 'lit-up',,,  
and, see **Exhibits B, D** above, as possible,,, 'fracture',,, would be a  
'stand alone' Neck Injury anyway,,, then not subject to any 'cause',  
'aggravate' or 'worsen' of cervical disease.....14-15, 26-30

**Exhibit J** 2 Pages: 1/16/2018 Fowble "no proof of a specific injury",  
but Fowble did not complete 1/30/2017 signed Time-Sheet Investigation  
to compel Olympics' statutory 'duty to preserve'. See **Exhibits E,F.** 1-70

# APPENDIX EXHIBIT A

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON**

2430 Chandler Court SW, P O Box 42401  
Olympia, Washington 98504-2401 • [www.biiia.wa.gov](http://www.biiia.wa.gov)  
(360) 753-6823

In re: **MICHAEL J. COLLINS**

Docket No. 17 25495

Claim No. ZB-21147

**ORDER GRANTING APPEAL**

The CLAIMANT's appeal from L&I's decision dated November 14, 2017 is granted.

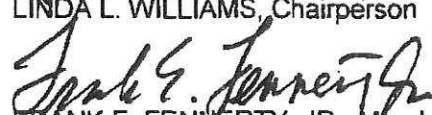
- This order granting appeal does not mean you have won your appeal. It means our agency agrees to hear your appeal.
- You will be notified of a conference date and time to discuss the appeal.
- You may represent yourself at the conference. You may also bring an attorney to represent you, or a family member, friend, or union representative to help you.
- In any proceeding, you may ask the judge questions and have the judge explain the procedures.

Dated December 12, 2017.

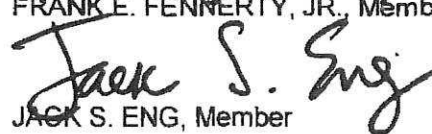
BOARD OF INDUSTRIAL INSURANCE APPEALS



LINDA L. WILLIAMS, Chairperson



FRANK E. FENNERTY, JR., Member



JACK S. ENG, Member

c: L&I

Visit our website at [www.biiia.wa.gov](http://www.biiia.wa.gov) for information on the appeal process. You will find an instructional video, a list of frequently asked questions, and our publications *Your Right to be Heard* and *Rules of Practice and Procedure*.



IN RE: MICHAEL J. COLLINS

CLAIM NO: ZB-21147

DOCKET NO: 17 25495

## JURISDICTIONAL HISTORY

**Please review this document.**

- This is a summary of actions relating to this appeal and does not include every action taken by the Department of Labor and Industries.
- Have it available at your conference.
- The judge will ask you if there are any errors in this document.
- The judge will ask you to agree the Board may use this document to show our authority to hear this appeal (jurisdiction).

DATE	DOCUMENT NAME: ACTION/RESULT
6/21/17	<b>Application for Benefits:</b> Occupational Disease 6/21/17, neck/right shoulder – Olympic Interiors
7/3/17	<b>Department Order:</b> Time-loss compensation benefits paid from 6/21/17 through 6/30/17; The worker's wage is set by taking into account the following: Worker's total gross wage received from all employment at the time of injury is \$5,851.56 per month. Worker's marital status eligibility on the date of this order is single with zero children. (Interlocutory)
9/13/17	<b>Department Order:</b> This claim was received by Department of Labor and Industries on 6/21/17 and is allowed for the occupational condition or disease diagnosed as right rotator cuff arthropathy; the Department has not yet determined employer liability for this claim; a further order will be issued establishing chargeable employers and percentage of liability (Determinative)
9/14/17	<b>Department Order:</b> Department of Labor and Industries is not responsible for the condition diagnosed as cervical disc degeneration; because it wasn't caused or aggravated by the industrial injury or occupational disease for which this claim was filed
9/14/17	<b>Protest:</b> Claimant (Pro se) Department order dated 9/14/17

- 11/14/17 **Department Order:** Department Order dated 9/14/17 is affirmed (APPEALABLE ONLY)
- 11/16/17 **Notice of Appeal (17 25495):** Claimant (Pro se) Department order dated 11/14/17
- 11/30/17 **Department Order:** This claim was allowed by order dated 9/13/17, for the condition or disease diagnosed as right shoulder strain; the date of manifestation has been determined to be 6/21/17 for compensation purposes because this is the date the disease required medical treatment; the cost of this claim will be charged to the claims experience of the employers listed below in the percentages shown: there are no chargeable employers for this claim This claim has been assigned to the employer above, and its claim costs will be used to set premium rates. If this is not your worker, you must notify the Department in writing within 60 days from the date this order is communicated to you.
- 12/5/17 **Department Order:** The worker's wage is set by taking into account the following: The wage for the job of injury is based on \$40.92 per hour, 6.50 hours per day, 5.00 days per week equals \$5,851.56 per month. additional wage for the job of injury includes: health care benefits; Worker's total gross wage received from all employment at the time of injury is \$6,946.94 per month. Worker's marital status eligibility on the date of this order is single with zero children.
- 12/12/17 **Board Order Granting Appeal (17 25495):** Department order dated 11/14/17



# APPENDIX EXHIBIT B

Board of  
Industrial Insurance AppealsIn re: CollinsDocket No. 1725495Exhibit No. 2☐ ADM. 10/9/18 Date ☒ REJ.

STATE OF WASHINGTON

## DEPARTMENT OF LABOR AND INDUSTRIES

Division of Industrial Insurance

PO Box 44291, Olympia, Washington 98504-4291

MICHAEL JOHN COLLINS  
10101 43RD STREET COURT EAST  
EDGEWOOD, WA 98371-2723Mailing Date: 11/03/17  
Claim Number: ZB21147  
Injury Date: 01/30/2017  
Worker: MICHAEL COLLINS

Dear IME Provider:

Examiner(s) Name(s): Sullivan, Joan  
Date(s) of IME: 8/21/2017

## IME Addendum Request

Thank you for examining MICHAEL COLLINS. I need more information so I've extended your authorization to view records on our online Claim and Account Center (CAC.) You may bill us for this addendum using billing code 1104M.

## Additional Information Needed:

Please review your report and the worker's claim file and answer the following question(s):

**[IM enters questions using Free Text]**

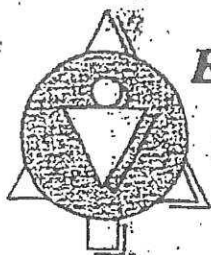
In your report of 8/21/2017, you stated that the cervical degenerative condition pre-existed the industrial injury and are not related. The cervical condition has been segregated, but this has been disputed. Please tell me if there is any evidence, on a more probable than not basis, that the cervical degeneration has been permanently aggravated by the right rotator cuff arthropathy. Please provide the rationale for your opinion.

If you need more information or help in writing your report, go to [www.imes.lni.wa.gov](http://www.imes.lni.wa.gov).

Sincerely,

FOR MARK FOWBLE  
Claim Manager  
(360) 902-4287

*detached  
11/8/2017*



# EVERGREEN MEDICAL PANEL, INC.

"COMPREHENSIVE TIMES THE FIRST TIME ... EVERY TIME"

TACOMA HOME OFFICE

2411 SOUTH 19TH STREET

TACOMA, WA 98405

SCHEDULING/INFORMATION: (253) 572-4171

FAX: (253) 572-4291

## IDENTIFYING INFORMATION

Name:	Michael Collins	Claim #:	ZB21147
Address:	10101 43 <sup>rd</sup> Street Court East	Date of Injury:	01/30/2017
	Edgewood, WA 98371-2723	Date of Birth:	10/24/1955
Claims Manager:			
		Mark Fowble	
Employer at time of injury:		Olympic Interiors, Inc.	
Date of examination:		August 21, 2017	
Location of examination:		Tacoma, Washington	
Date of addendum:		November 8, 2017	
Examiner:		Joan Sullivan, M.D., Orthopedic Surgeon	

## ADDENDUM

Dear Mr. Fowble,

Your letter of November 3, 2017, has been received. In it you note that you need an addendum regarding Mr. Collins. The question that you have is if there is any evidence on a more-probable-than-not basis that his preexisting cervical degeneration has been permanently aggravated by right rotator cuff arthropathy and to give rationale for this. As you know, Mr. Collins sustained an injury on January 30, 2017, and had an examination done on August 21, 2017. In his history of the injury he had the onset of symptoms when he was lifting sheetrock and felt that he strained both his neck and his right shoulder.

At the time of this incident this claimant had both significant shoulder cuff arthropathy and also severe multilevel cervical spine disk and facet degeneration with a grade 1 anterolisthesis of C2 on C3 and a partial osseous fusion of C2 and C3.

On the independent medical exam it was my opinion that although he had preexisting rotator cuff arthropathy that the demands of his job over many years would enter into the development of this disease and it would be considered an occupational disease. His cervical spine disease, however, is not related to his occupation and the incident of the day in which he was struck on the head would neither cause nor aggravate nor worsen the preexisting cervical spine disease that was present, nor would the cervical degeneration be aggravated by right rotator cuff arthropathy. There are no scientific studies that would support that logic, and the rationale for my opinion is the fact that there is nothing in the scientific literature or

COLLINS, MICHAEL

Claim #ZB21147

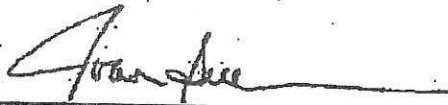
November 8, 2017

Page 2

in clinical experience that would support his cervical disease as being aggravated by either his rotator cuff arthropathy or by the incident that took place on January 30, 2017, and this is on a more-probable-than-not basis.

If you have additional questions regarding this, please do not hesitate to contact me.

Sincerely,



---

Joan Sullivan, M.D., Orthopedic Surgeon

JS:jw:11/08/17

# APPENDIX EXHIBIT C



STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES  
PO BOX 44291, OLYMPIA, WASHINGTON 98504-4291

June 27, 2017

CLAIM NUMBER ZB21147  
INJURY DATE 01/30/2017  
DATE OF BIRTH 10/24/1955  
CLAIMANT COLLINS  
MICHAEL J

Sincerely,

Eric J Rose  
Claim Manager, Unit G  
PHONE: (360) 902-4434  
FAX: (360) 902-4567

\*\*\*\*\* GO PAPERLESS \*\*\*\*\*

Receive your claim related information electronically  
Sign up now: [www.eCorrespondence.lni.wa.gov](http://www.eCorrespondence.lni.wa.gov)  
Translated correspondence will be sent by postal mail  
\*\*\*\*\*

- \* Describe in detail what you were doing when you were injured.

Cutting, lifting, carrying, hanging' 5/8" 4x12' Fr. Sheds of Skat-out by  
my SELF, as ordered of me by Victor Lopez, Foreman for Olympic. I asked Lopez...  
if this a 2 man job - to work with 4x12' Stand up? His reply - "its work" ...  
See WIOSH recommendations for preventing over-exertion injuries.  
"Use two workers to lift. Larger, thicker ie. 5/8", and heavier sheds".

- \* Describe in detail what happened on the job that you believe caused your symptoms.

lifting, carrying, hanging' 5/8" 4x12' Fr. Sheds by my SELF  
As ordered by Victor Lopez - Foreman for Olympic, which as specified  
is a 2 man job. Lifted, and tried to stand shed up, felt severe pain  
in my Neck - Right Shoulder. Shed shut up - then it fell against my head.  
Did your symptoms come on gradually?

Yes No Yes - immediately on 1/30/2017

But subsided thru 6/01/2017

How long had you been doing this activity when you first noticed discomfort or pain?

1 day \_\_\_\_\_ 2 days \_\_\_\_\_ 1 week \_\_\_\_\_ 1 month \_\_\_\_\_  
Other Approximately 57 to 60 hours First day of work  
with Olympic Foreman's Tail...

- \* When did you first visit a health care provider to treat your injury? 6/21/2017

235001100048010200000000



STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES  
PO BOX 44291, OLYMPIA, WASHINGTON 98504-4291

June 27, 2017

CLAIM NUMBER ZB21147  
INJURY DATE 01/30/2017  
DATE OF BIRTH 10/24/1955  
CLAIMANT COLLINS  
MICHAEL J

If you didn't visit a health care provider right away, why not?

*1/30/17*  
After initial Injury - I worked 'Lighter duty' - as my  
work partner ANTONIO did all the cutting - LIFTING,  
CARRYING OF SHEET, so my pain subsided. And, I wanted to  
keep my employment, so I tried to work thru it.  
ORIG: WORKER - MICHAEL COLLINS When I say 'subsidio', in this means  
CC: EMPLOYER - OLYMPIC INTERIORS INC Less severe pain, because I was  
EMPL GRP(E) - APPROACH MANAGEMENT SERVICES not lifting, carrying  
SEE my on-line claim filing sheets, only screwing & hats  
6/20/2017 description of events. the rest of that week.

And see this page 2 OF3. Olympic Interiors Inc. did NOT  
Follow NIOSH recommendations, For a "Shoetrock Hanging"  
employer, to prevent my injury on 1/30/2017. Then falsely  
documented me Michael J. Collins on my 'Days stub', ...  
As doing ~~29~~ 29 hours of 'Framing', when I never  
Framed even For 1 minute, From 1/30/17-2/2/17.  
IF my Neck - and Right Shoulder, (which still  
requires more extensive diagnostic Testing) are  
segregated, then my Right Shoulder should be  
classified AS AN injury attributable solely to  
Olympic any way, IF my Neck is classified  
AS AN occupational disease, For all my employers.  
But the intentional violations of NIOSH recommendations  
by Olympic, and its Foreman Victor Lopez, should  
effect (adversely) Olympic's 'experience rating', regardless.

I have no physical  
non-work-related - Hobbies  
Page 3 of 3

Michael J. Collins Pro se Michael Collins

WORKER COPY

(UG2R:1B:UG)

235001100048010300000000

# APPENDIX EXHIBIT D



**Imaging Report****Tacoma: On Cedar**

2202 S. Cedar St, Suite 200 | Tacoma, WA 98405 | T (253) 761-4200 | F (253) 761-4201

JOAN SULLIVAN MD  
Evergreen Medical Panel, Inc  
2411 South 19th Street  
Tacoma, WA 98405

Phone: (253) 572-4171  
FAX: 2535724291

**COLLINS, MICHAEL**

M 61 yrs (24-Oct 1955) MRN: 62220  
Ph: (253) 348-5842 PHN:  
Exam Date: 23 Aug 2017  
Exam #: CE17-085683  
Location: TRA on Cedar  
File #: ZB21147

**X-RAY CERVICAL SPINE MINIMUM 4 VIEWS****EXAM:** Cervical spine radiographs

**HISTORY:** Clinician order/exam reason and patient symptoms: Neck pain  
Duration/Date of injury: 7 months  
Related Medical/Surgical History: DJD  
Description of injury/accident if applicable: N/A

**TECHNIQUE:** 7 views of the cervical spine were obtained.**COMPARISON:** None

**FINDINGS:** There is straightening of the normal cervical lordosis. There is grade 1 anterolisthesis of C2 on C3. There is at least partial osseous fusion of the C2 and C3 posterior elements.

There is asymmetric widening of the right atlantoaxial space on the odontoid view, which may be projectional, however cannot exclude fracture.

Vertebral bodies are normal in height. There is no suspicious lytic or sclerotic osseous lesion. The prevertebral soft tissue contour is within normal limits. There is severe multilevel cervical spine disc and facet degeneration.

**IMPRESSION:**

Asymmetric widening of the right atlantoaxial space on the odontoid view, which may be projectional, however cannot exclude fracture. If there is clinical concern for fracture, CT of the cervical spine could be performed.

Multilevel severe degenerative changes.

Reported: 23 Aug 2017 12:14 GEOFFREY RUTLEDGE  
Electronically Signed: 23 Aug 2017 12:19 GEOFFREY RUTLEDGE

# APPENDIX EXHIBIT E

2017-06-28 11:16

LNITAC216

2535963827 &gt;&gt;

WA LNI FX02 P 6/6

Claim 2/321141

Olympic Interiors, Inc.  
815 S 336th St  
Federal Way, WA 98003

Michael J Collins  
10101 43rd St. Ct. East  
Edgewood, WA 98371

At LNI: 6/28/2017 11:15:06 AM [Pacific Daylight Time]

Employee Pay Stub		Check number:		Pay Period: 01/30/2017 - 02/05/2017		Pay Date: 02/10/2017	
Employee				Status (Fed/State)		Allowances/Extra	
Michael J Collins, 10101 43rd St. Ct. East, Edgewood, WA 98371				Married/(none)		Fed-4/0/NA-0/0	
Earnings and Hours		Qty	Rate	Current	YTD Amount	Non-taxable Company Items	
Wages Hanging		2.00	40.92	81.84	81.84	L&I Co-Framing Install	123.83
Wages Framing		29.00	40.92	1,186.68	1,186.68	L&I Co-Hanging Install	26.59
Wages Hanging Scrap		1.00	40.92	40.92	40.92	Fringo Bonofits-PNW Carpenters	478.08
		32.00		1,309.44	1,309.44		
Taxes				Current	YTD Amount		
Medicare Employee Addl Tax				0.00	0.00		
Federal Withholding				-107.00	-107.00		
Social Security Employee				-91.19	-91.19		
Medicare Employee				-18.99	-18.99		
				-207.18	-207.18		
Adjustments to Net Pay				Current	YTD Amount		
L&I EE-Framing Install				-20.72	-20.72		
L&I EE-Hanging Install				-4.22	-4.22		
Install-Vac PNW Carpenters				-32.00	-32.00		
Dues-Journeyman Install				-52.48	-52.48		
				-109.42	-109.42		
Net Pay				992.84	992.84		

RECEIVED

JUN 28 2017

6247 20181

RECEIVED

JUN 28 2017

DEPT. OF REVENUE

# APPENDIX EXHIBIT F

The Honorable Michael E. Schwartz

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

MICHAEL J. COLLINS,

Plaintiff,

v.

OLYMPIC INTERIORS INC.,

Defendant.

NO. 19-2-04348-8

DECLARATION OF DOUG BAGNELL IN  
SUPPORT OF OLYMPIC INTERIORS,  
INC.'S MOTION FOR SUMMARY  
JUDGMENT

I, Doug Bagnell, declare as follows:

1. I am over the age of 18, am competent to testify and have personal knowledge of the matters set forth below.

2. I am the Controller for Olympic Interiors, Inc. ("Olympic"). I have worked for Olympic since 2008.

3. On January 27, 2017, Olympic hired Michael Collins to hang sheetrock at the Green River Community College project ("Project"). In total, he worked 32 hours between January 30 and February 2, 2017. After Collins left on February 2, he did not return to work.

4. After February 2, the next time that I heard from Michael Collins was on February 10 when he sent an email to Olympic indicating that he had not been able to get out of his house due to a snowstorm that had also knocked out his internet and phone. Attached as **Exhibit A** is a true and correct copy of Collins' February 10, 2017 email.

DECLARATION OF DOUG BAGNELL IN SUPPORT OF OLYMPIC  
INTERIORS, INC.'S MOTION FOR SUMMARY JUDGMENT - 1

6972040.1

Williams, Kastner & Gibbs PLLC  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

5. On June 20, 2017, Olympic received another email from Collins. In the email, Collins notified Olympic that he filed a worker's compensation claim with the Department of Labor & Industries. For the first time, Collins alleged that he had sustained a workplace injury on January 30, 2017 while working on the Project. Collins never reported any injury to anyone at Olympic while he was employed.

6. In response to the claim, I drafted a memorandum memorializing my observations of Collins' restricted movement during the pre-employment process on January 27, 2017. Attached as **Exhibit B** is a true and correct copy of the June 22, 2017 memorandum.

7. Based on my review of the pleadings, I understand that Collins alleges that Olympic submitted his Olympic Timesheet to the Department in response to his worker's compensation claim. Olympic did not submit his (or any employee's) Timesheet to the Department. Attached as **Exhibit C** is a true and correct of the Timesheet.

8. Each quarter Olympic must submit its Worker's Compensation Quarterly Reports. Despite Collins' assertions, the Report does not contain specific information about him or the work that he performed. Attached as **Exhibit D** is a true and correct copy of the Report for the quarter ending on March 31, 2017, which includes the timeframe that Collins worked for Olympic.

I declare under penalty of perjury of the laws of the State of Washington that the above statements are true and correct.

Signed at Federal Way, Washington, this 4<sup>th</sup> day of November, 2019.

SEE ATTACHED SIGNATURE PAGE

Doug Bagnell

[illegible]





Washington State Department of  
Labor & Industries  
PO Box 44140  
Olympia WA 98504-4140

# EXHIBIT D

## Workers' Compensation

### Employer's Quarterly Report

File online now by going to:

QuarterlyReports.Lni.wa.gov

Use PAC code: 48204324

Policyholder

OLYMPIC INTERIORS INC  
815 S 336TH ST  
FEDERAL WAY, WA 98003

L&I Account ID:

985,987-02

Report is for quarter ending:

171 3/31/2017

WA Unified Business Identifier (UBI):

602 852 267

Due date:

5/1/2017

Questions? Call your Account Manager:

(360) 902-5617

YOU HAVE "NOT" ELECTED COVERAGE FOR EXEMPT CORPORATE OFFICERS, EXEMPT LIMITED LIABILITY COMPANY MEMBERS, OWNERS OR PARTNERS. HOURS/UNITS FOR THESE INDIVIDUALS MUST NOT BE REPORTED.

### No worker hours this quarter?

You will still need to submit a quarterly report.  
(See enclosed instruction sheet.)

Enter total worker hours for each class to calculate the premiums you owe this quarter. Instructions are enclosed.

1 Class Code	2 Class Code Description	3 Gross Payroll	4 Worker Hours X	5 Your Rate	= 6 Premium
0512-00	Insulation/Sound Proofing Inst	26,000	652.00	3.6765	2,397.08
0516-02	Bldg Repair/Remodeling NOC	356,982	8340.25	4.2699	35,612.03
0540-00	Drywall Install (Disc/Sq Ft)	483,211	748,693.00	0.0709	53,082.33
0541-00	Drywall Taping (Disc/Sq Ft)	578,897	748,693.00	0.0333	24,931.48
1101-06	Delivery by Whsl/Retail Distr	30,502	4,094.50	2.5451	2,785.61
4900-00	Superint/Proj. Mgr - Const	24,208	480.00	0.5649	271.15
4904-00	Clerical Office NOC & Draftsmn	10,694	427.75	0.1531	65.49
4911-00	Construction Estimators	29,933	480.00	0.2866	137.57

Preparer's  
information:

Preparer (First, Last) Doug Bagnell		I declare under the penalty of perjury of the laws of the state of Washington (RCW 9A.72.020) that the information contained in this report and in any attachment is true and correct.
Daytime Phone (253) 926-5526		
E-mail dougbo@olympicint.com		
Signature X <i>Doug Bagnell</i>		

Make all checks payable to the Department of Labor & Industries. Payment must be postmarked by the due date above and sent with this form to:

Dept of Labor & Industries  
PO Box 34022  
Seattle WA 98124-1022

☐ Address or owner change?  
If yes, please check here and complete change form.

23500074-000126-01-01010000

7	Subtotal	119,282.74
8	Subtract any existing L&I credit	19.30
9	Add any previous balance you owed	
10	Add any late penalties you owe*	
11	Add any late interest you owe*	
12	Amount due	\$119,263.44

\* Enclosed instructions explain our late fees.

Remit ID

\$

[06-2014]

EXHIBIT D  
CONFIDENTIAL

OLYMPIC000015

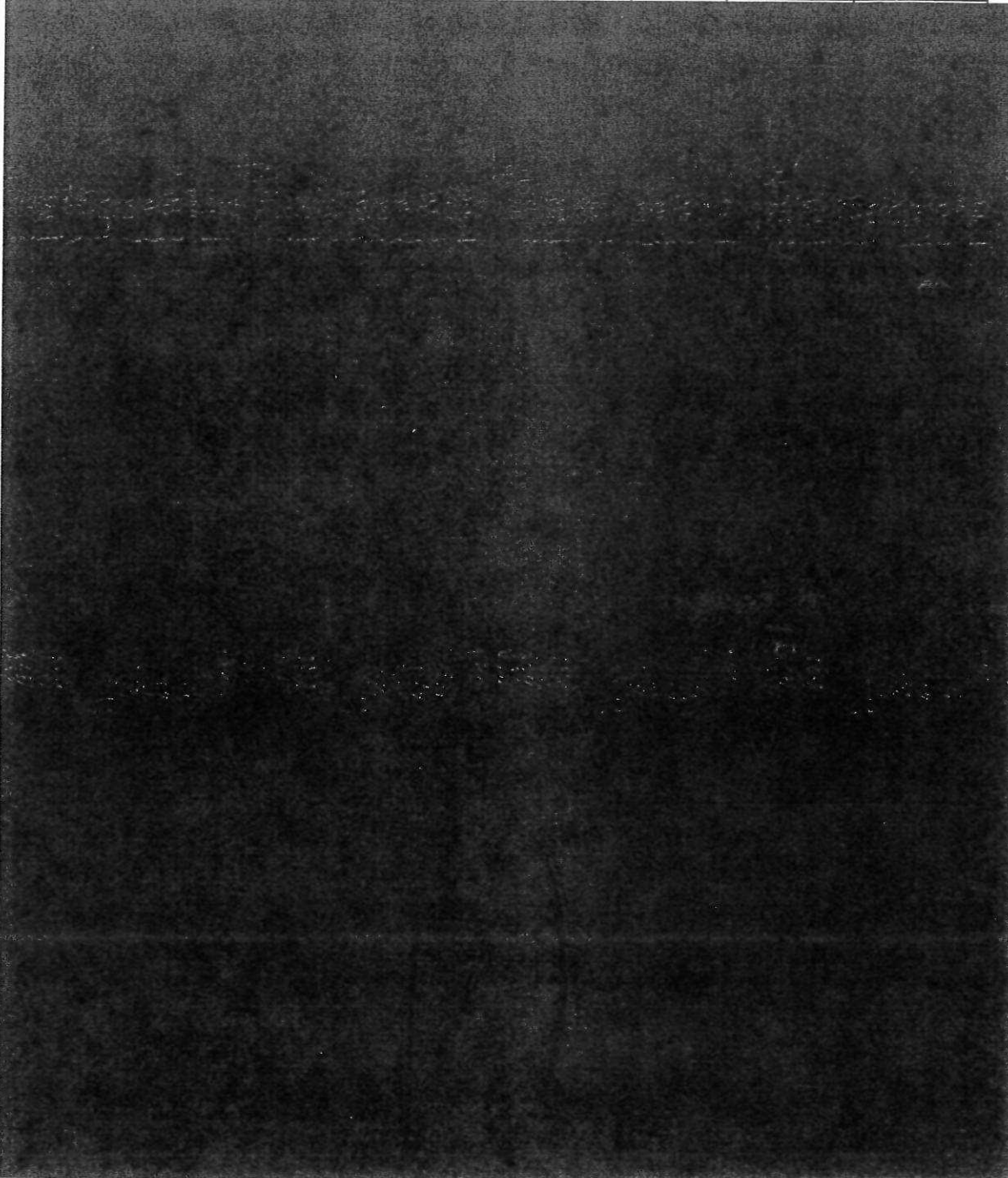


SUPPLEMENTAL QUARTERLY REPORT  
FOR THE DRYWALL INDUSTRY

Olympic Interiors, Inc.		Telephone: (253) 926-5526
815 S 336th St Federal Way, WA 98003		
UBI # 602-852-267	L & I Acct # 985,987-02	Report for period ending: 3/31/2017

## Employee Information

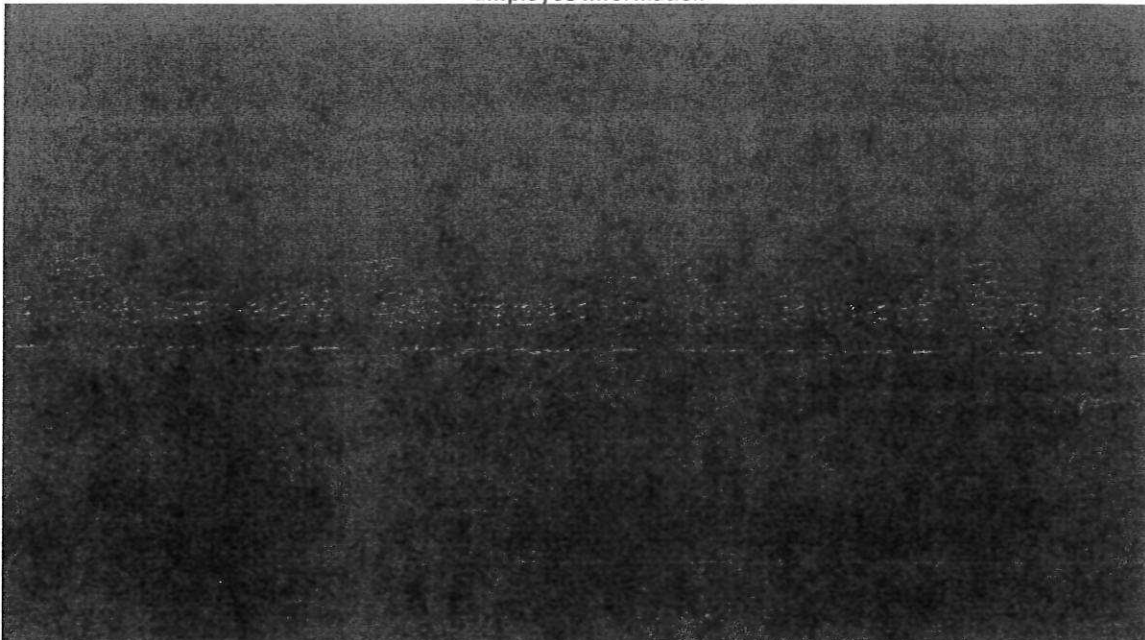
Employee SS#	Employee Name	Gross Wages	Basis for pay	Rate per Unit/Hour	Work Performed
--------------	---------------	----------------	------------------	-----------------------	-------------------



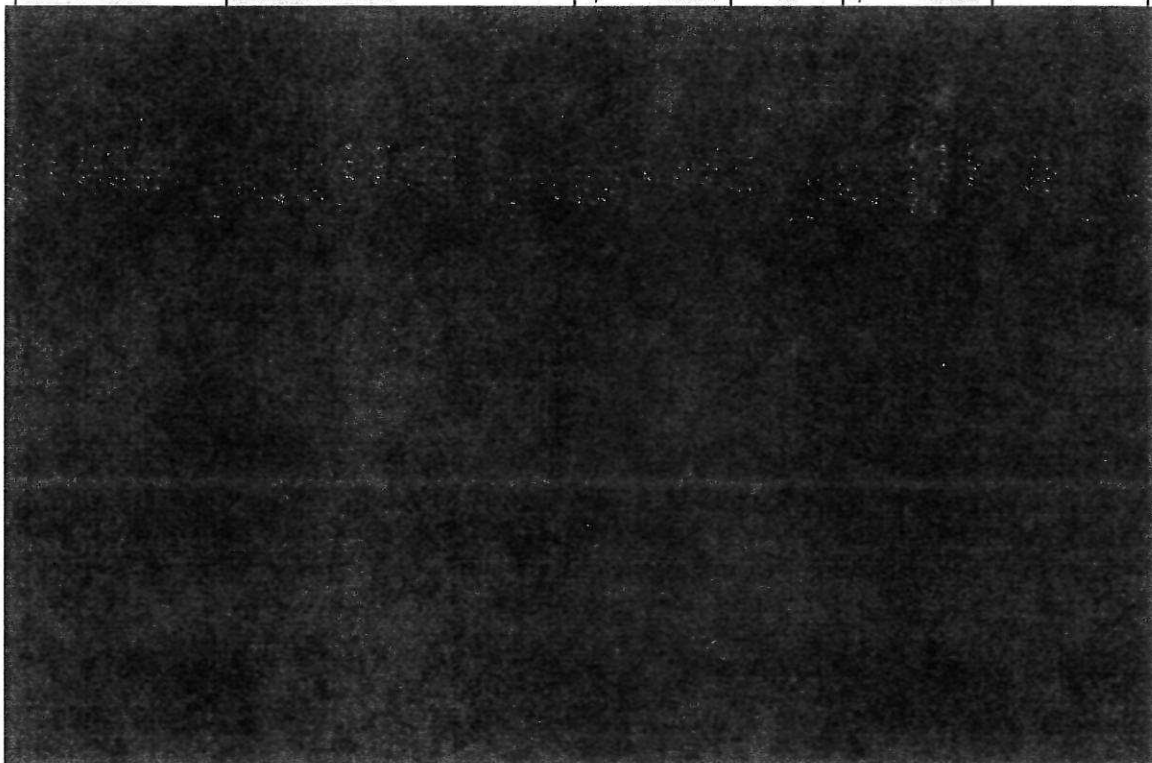
SUPPLEMENTAL QUARTERLY REPORT  
FOR THE DRYWALL INDUSTRY

Olympic Interiors, Inc.	Telephone: (253) 926-5526
815 S 336th St Federal Way, WA 98003	
UBI # 602-852-267	L & I Acct # 985,987-02
	Report for period ending: 3/31/2017

## Employee Information



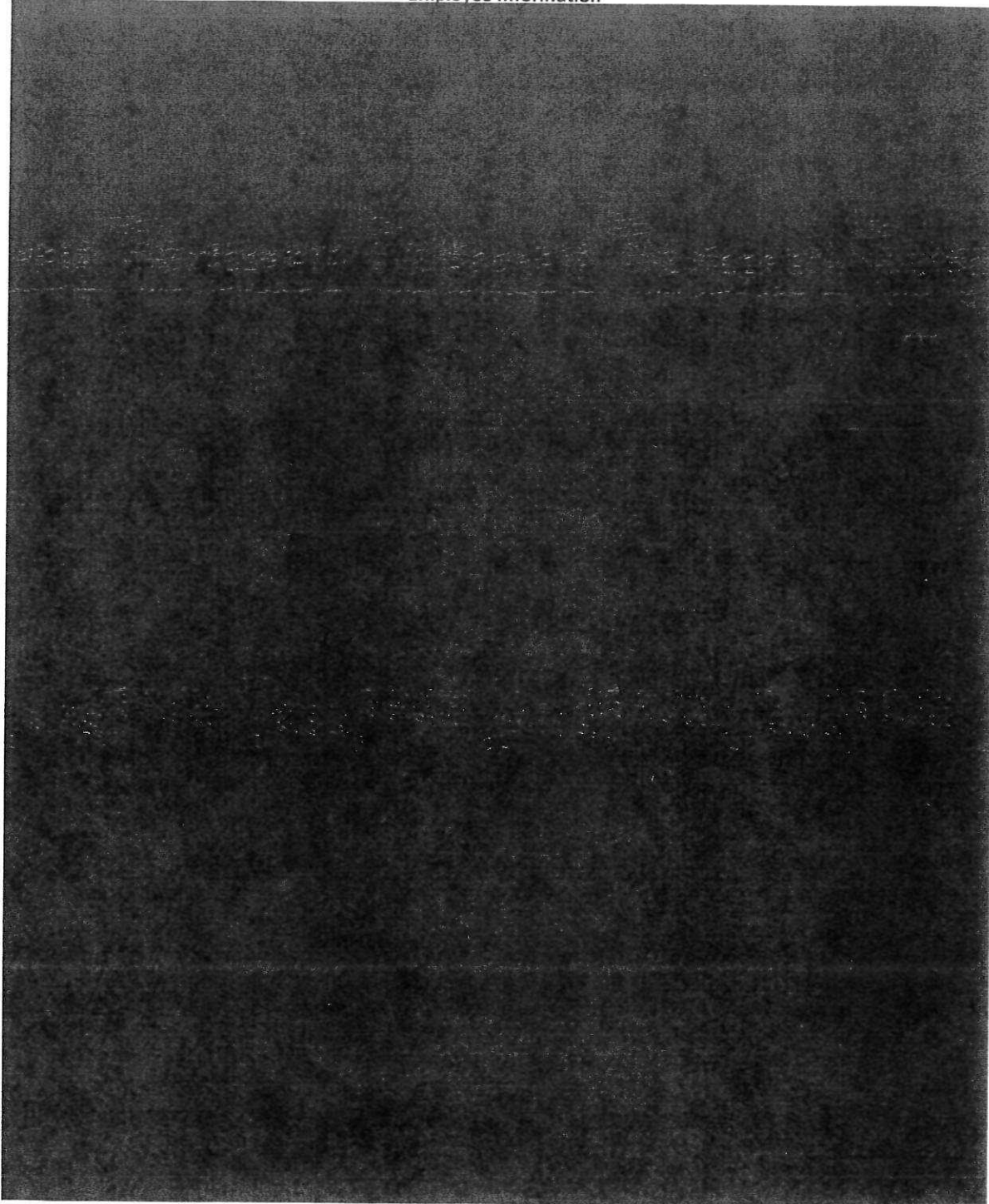
532-60-6278	Michael J Collins	\$	81.84	hr	\$	40.92	I
-------------	-------------------	----	-------	----	----	-------	---



SUPPLEMENTAL QUARTERLY REPORT  
FOR THE DRYWALL INDUSTRY

Olympic Interiors, Inc.		Telephone: (253) 926-5526
815 S 336th St Federal Way, WA 98003		
UBI # 602-852-267	L & I Acct # 985,987-02	Report for period ending: 3/31/2017

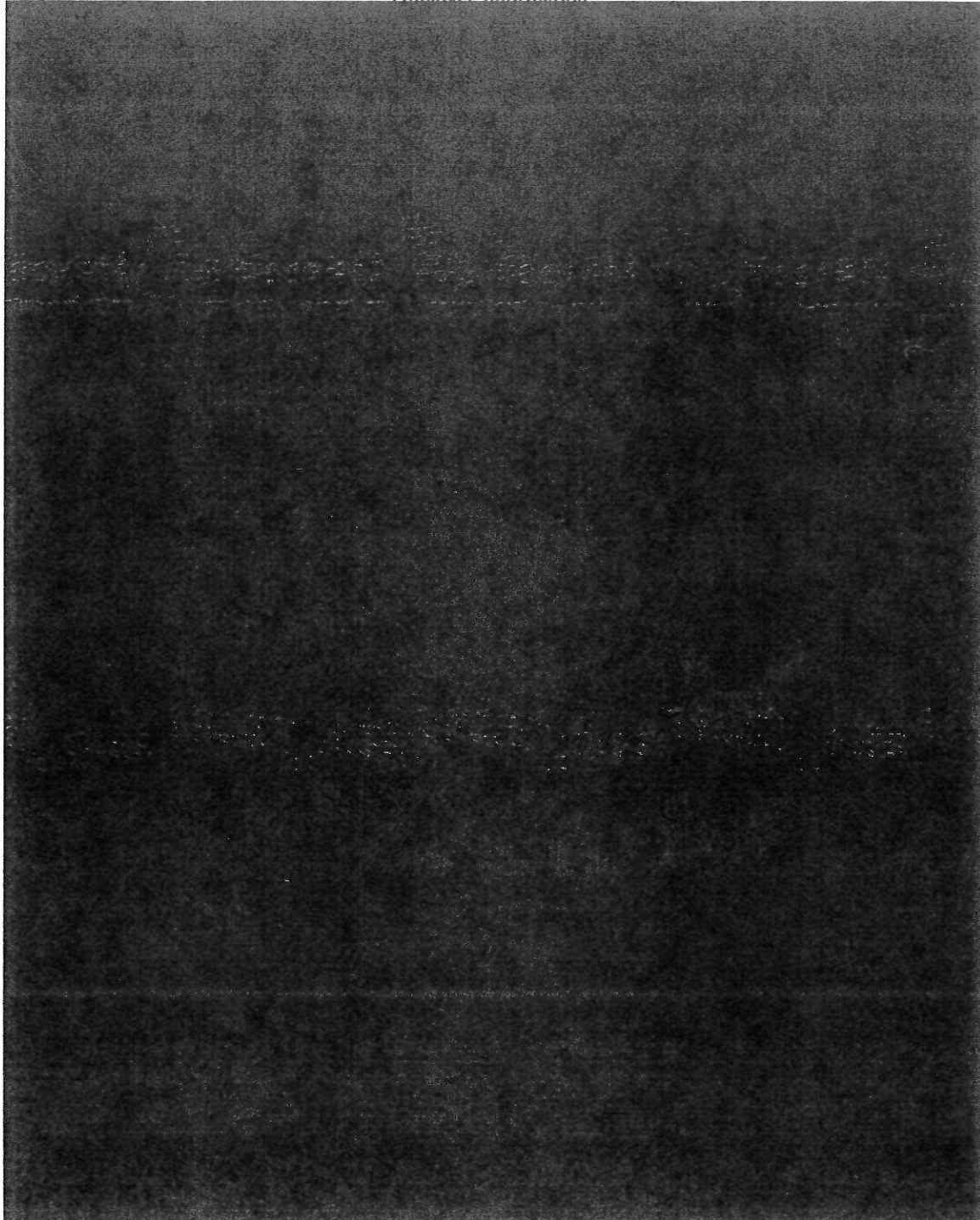
Employee Information



SUPPLEMENTAL QUARTERLY REPORT  
FOR THE DRYWALL INDUSTRY

Olympic Interiors, Inc.		Telephone: (253) 926-5526
815 S 336th St Federal Way, WA 98003		
UBI # 602-852-267	L & I Acct # 985,987-02	Report for period ending: 3/31/2017

Employee Information

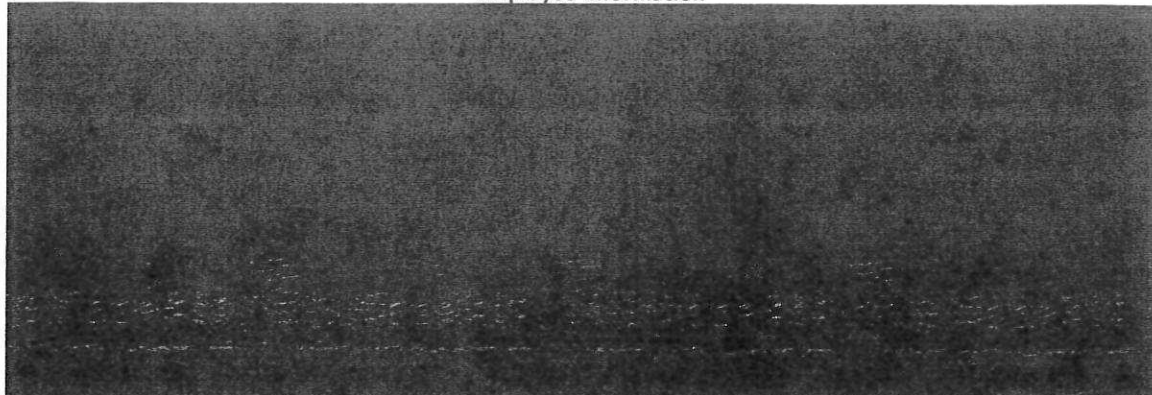




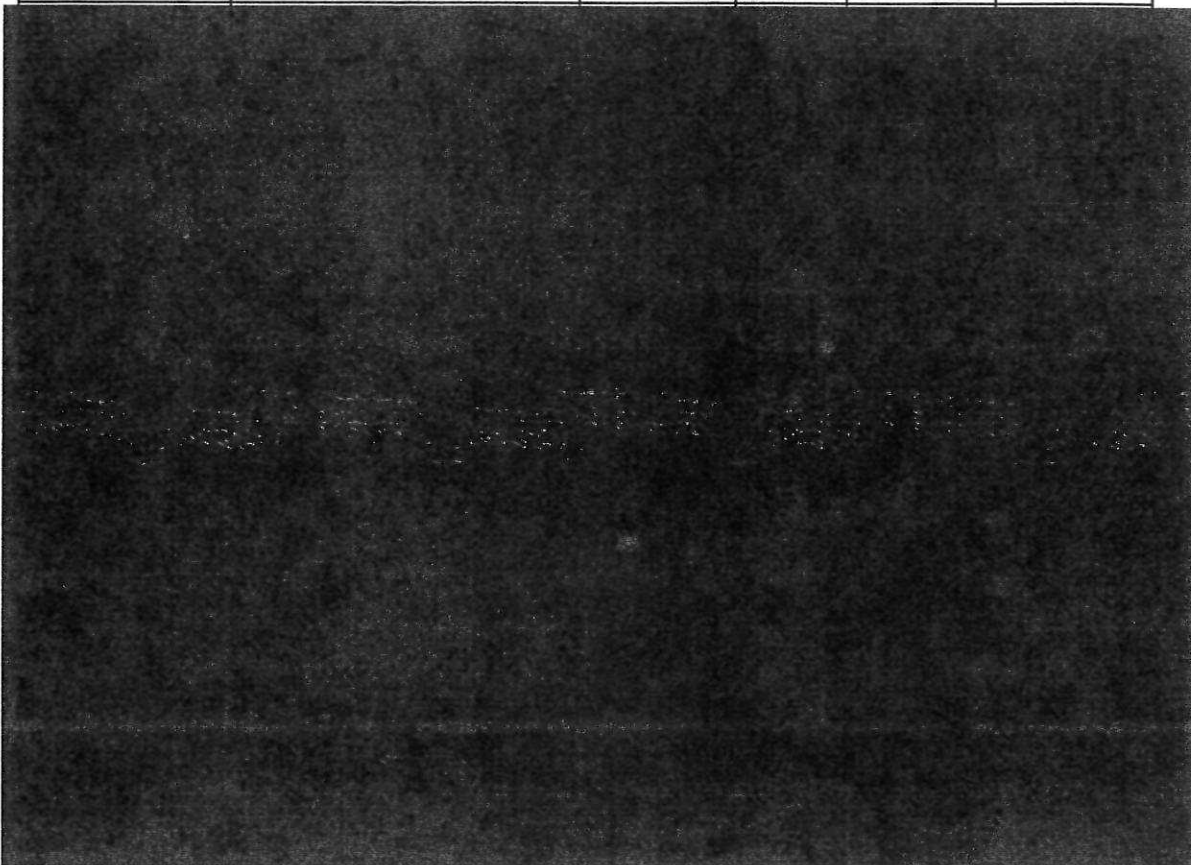
SUPPLEMENTAL QUARTERLY REPORT  
FOR THE DRYWALL INDUSTRY

Olympic Interiors, Inc.	Telephone: (253) 926-5526
815 S 336th St Federal Way, WA 98003	
UBI # 602-852-267	L & I Acct # 985,987-02
	Report for period ending: 3/31/2017

## Employee Information



532-60-6278	Michael J Collins	\$ 40.92	hr	\$ 40.92	C
-------------	-------------------	----------	----	----------	---



Please submit this or equivalent form with the L & I Quarterly Report if reporting in discounted drywall rates.

Basis for pay (P=Piecework, H=Hourly, S=Salary, C=Commission)

Rate per Unit/Hour (Hourly wage or piecework rates)

Work performed (I=Install, T=Tape, X=Prime/Texture, C=Scrap, S=Stock or otherwise, briefly describe duties)

1           for Olympic Interiors, however.

2           MS. PALMER: Judge, I would also just note that  
3           Mr. Collins can testify, when he testifies, as to  
4           the date he was injured.

5           MS. BALCH: And just for the record, the Department  
6           would join the objections in case this goes up on  
7           appeal and the employer is no longer involved. I  
8           want to make a clear record. Thanks.

9           JUDGE MCDONALD: Thank you.

10                  Again, the relevancy, I do not find that this  
11           line of questioning is relevant, Mr. Collins. The  
12           objection is sustained, and I understand the  
13           Department has joined in that objection.

14   Q.    (By Mr. Collins) Is it not a fact, Mr. Bagnell, that  
15   anytime an employee turns in a timecard, they have to  
16   sign that timecard?

17   A.    No.

18   Q.    It's not. It's not a requirement. That's your answer,  
19   it's not a requirement?

20   MS. PALMER: Objection. Asked and answered.

21   JUDGE MCDONALD: Sustained.

22   MS. SILVERNALE: And argumentative.

23   JUDGE MCDONALD: Overruled.

24   Q.    (By Mr. Collins) So, Mr. Bagnell, why exactly -- in  
25   what capacity was I hired?

1 A. As a drywall installer.

2 Q. Was I hired under any other capacity?

3 A. No.

4 MR. COLLINS: I'd like to submit another exhibit,  
5 Judge. It shows the hours I worked on that job  
6 and exactly the type of work I was performing on  
7 that job. They can all have a copy of it. It was  
8 given to me by the employer's counsel.

9 JUDGE MCDONALD: Do you have copies of it?

10 MS. COLLINS: A couple copies, but the other ones have  
11 markings on it.

12 JUDGE MCDONALD: I'm going to give counsel -- we have  
13 three of them -- a few minutes to actually look at  
14 that, and just like the last one, I will entertain  
15 any objections.

16 MS. BALCH: I don't have a copy of it. I would like a  
17 copy whether it is admitted or not, just to put  
18 that on the record.

19 JUDGE MCDONALD: So for the record, regardless of  
20 whether these exhibits are rejected or admitted,  
21 at some type of a break, if the parties would  
22 like a copy of it, I will do so.

23 MS. PALMER: Your Honor, I'm going to make essentially  
24 the same objections as I did for the last exhibit.  
25 This looks like a pay stub. It contains hearsay

# APPENDIX EXHIBIT G



CLAIM NUMBER: ZB21147  
UNIT: 6

**CLAIMS PHONE REFERRAL**

CLAIMANT NAME: MICHAEL COLLINS  
DATE OF INJURY: 01/30/2017

PHONE: 2067944008

CONTACT NAME: Ann Silvernale/Emp rep

**CLAIMS PHONE REFERRAL** 7/20/2017 3:35:00 PM **RFRL-ID:** 008380357

Please reject the claim and return the claim, thank you

**CREATE-DATE:** 7/20/2017 3:35:00 PM  
**BY WRKPOS-ID:** U680

CONTACT NAME: Ann Silvernale/Emp rep

**CLAIMS PHONE RESPONSE**

**RFRL-ID:** 008380357

CT EOI atty, spoke to Ann - we discussed the claim and the reason for the IME opinion. She would like to write a letter on behalf of the employer to put before the IME panel. I told her I would be happy to forward employer questions to the IME panel.

**CREATE-DATE:** 7/20/2017 3:35:00 PM  
**BY WRKPOS-ID:** U680

# APPENDIX EXHIBIT H

Secure Message

Send Date: Thursday, October 05, 2017

Submitted by: MARK FOWBLE

Relationship: Claimant

Phone: (360) 902-4287

Source: Claim ID - ZB21147

From: Claims Manager

To:

Claim Manager: CLAIMID ZB21147

Subject: Continuation of my October 4, 2017 message sent

Mr. Collins,

Just to be clear on this, you are confused about the etiology of an injury versus an occupational disease. Claims are adjudicated as either injuries or occupational diseases. The latter occur as a wearing down of particular body parts over a long period of time by the duties of your job. In your case, the shoulder is an occupational disease caused by your 40 year history as a sheetrock hanger. Regarding your neck, however, you are describing an injury. Something specific happened at a single point in time that caused damage to a particular body part. As such, it is not an occupational disease and will not be added to your occupational claim unless a medical opinion says it was lit up by the occupational disease. This is the reason I asked for an IME addendum.

If you want treatment for neck as a specific injury under Workers' Compensation, you will need to file a new claim for a specific injury. If allowed, we can tie the claims together and adjudicate them together, but it does not appear that they are the same occurrence and so, they should not be on the same claim.

I am happy to work with you on your claims. There is no need to keep threatening me with subpoenas.

Thank you,

Mark

APPENDIX EXHIBIT  
J

STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES  
DIVISION OF INDUSTRIAL INSURANCE  
PO BOX 44291  
OLYMPIA, WA 98504-4291

MAILING DATE 01/16/2018  
CLAIM NUMBER ZB23273  
INJURY DATE 01/30/2017  
CLAIMANT COLLINS  
MICHAEL J  
EMPLOYER OLYMPIC INTERIO  
UBI NUMBER 602 852 267  
ACCOUNT ID 985, 987-02  
RISK CLASS 540  
SERVICE LOC Tacoma

MICHAEL COLLINS  
10101 43RD STREET COURT EAST  
EDGEWOOD WA 98371-2723

### NOTICE OF DECISION

This claim for benefits filed on 01/04/2018 while working for OLYMPIC INTERIORS INC is hereby rejected as an industrial injury or occupational disease for the following reasons(s):

That there is no proof of a specific injury at a definite time and place in the course of employment.

That claimant's condition is not the result of injury alleged.

That claimant's condition is not the result of an industrial injury as defined by the industrial insurance laws.

That the claimant's condition pre-existed the alleged injury and is not related thereto.

That the claimant's condition is not an occupational disease as contemplated by section 51.08.140 RCW.

Any and all bills for services or treatment concerning this claim are rejected, except those authorized by the department.

Board of  
Industrial Insurance Appeals  
In re: Collins  
Docket No. 1810796  
Exhibit No. 10  
☐ ADM. 10/31/17 ☒ REJ.  
Date

THIS ORDER BECOMES FINAL 60 DAYS FROM THE DATE IT IS  
COMMUNICATED TO YOU UNLESS YOU DO ONE OF THE FOLLOWING: FILE  
A WRITTEN REQUEST FOR RECONSIDERATION WITH THE DEPARTMENT OR  
FILE A WRITTEN APPEAL WITH THE BOARD OF INDUSTRIAL INSURANCE  
APPEALS. IF YOU FILE FOR RECONSIDERATION, YOU SHOULD INCLUDE THE  
REASONS YOU BELIEVE THIS DECISION IS WRONG AND SEND IT TO:  
DEPARTMENT OF LABOR AND INDUSTRIES, PO BOX 44291, OLYMPIA, WA  
98504-4291. WE WILL REVIEW YOUR REQUEST AND ISSUE A NEW ORDER.  
IF YOU FILE AN APPEAL, SEND IT TO: BOARD OF INDUSTRIAL INSURANCE  
APPEALS, PO BOX 42401, OLYMPIA WA 98504-2401 OR SUBMIT IT ON AN  
ELECTRONIC FORM FOUND AT [HTTP://WWW.BIIA.WA.GOV/](http://WWW.BIIA.WA.GOV/).

STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES  
DIVISION OF INDUSTRIAL INSURANCE  
PO BOX 44291  
OLYMPIA, WA 98504-4291

MAILING DATE 01/16/2018  
CLAIM NUMBER ZB23273  
INJURY DATE 01/30/2017  
CLAIMANT COLLINS  
MICHAEL J  
EMPLOYER OLYMPIC INTERIO  
UBI NUMBER 602 852 267  
ACCOUNT ID 985, 987-02  
RISK CLASS 540  
SERVICE LOC Tacoma

Supervisor of Industrial Insurance  
By Mark A Fowble  
Wkrs Cmp Adj 4  
(360) 902-4287

ATTACHMENT

MAILED TO: WORKER - MICHAEL COLLINS  
10101 43RD STREET COURT EAST, EDGEWOOD WA 98371-2723  
EMPLOYER - OLYMPIC INTERIORS INC  
815 S 336TH ST, FEDERAL WAY WA 98003  
EMPL GRP(B) - APPROACH MANAGEMENT SERVICES  
1711 S JACKSON ST, SEATTLE WA 98144

THIS ORDER BECOMES FINAL 60 DAYS FROM THE DATE IT IS  
COMMUNICATED TO YOU UNLESS YOU DO ONE OF THE FOLLOWING: FILE  
A WRITTEN REQUEST FOR RECONSIDERATION WITH THE DEPARTMENT OR  
FILE A WRITTEN APPEAL WITH THE BOARD OF INDUSTRIAL INSURANCE  
APPEALS. IF YOU FILE FOR RECONSIDERATION, YOU SHOULD INCLUDE THE  
REASONS YOU BELIEVE THIS DECISION IS WRONG AND SEND IT TO:  
DEPARTMENT OF LABOR AND INDUSTRIES, PO BOX 44291, OLYMPIA, WA  
98504-4291. WE WILL REVIEW YOUR REQUEST AND ISSUE A NEW ORDER.  
IF YOU FILE AN APPEAL, SEND IT TO: BOARD OF INDUSTRIAL INSURANCE  
APPEALS, PO BOX 42401, OLYMPIA WA 98504-2401 OR SUBMIT IT ON AN  
ELECTRONIC FORM FOUND AT [HTTP://WWW.BIIA.WA.GOV/](http://WWW.BIIA.WA.GOV/).